NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

NSC-D/LOS # 601

MEMORANDUM

July 20, 1976

UNCLASSIFIED

TO: Members of the Executive Group of the Interagency Task Force on the Law of the Sea

SUBJECT: Study on the Revised Single Negotiating Texts, by the Asian-African Legal Consultative Committee

Attached for your information is a copy of the Study on the Revised Single Negotiating Texts as produced at the seventeenth session of the Asian-African Legal Consultative Committee, June 28 through July 5, 1976 in Kuala Lumpur.

Otho E. Eskin
Staff Director

Attachment:
As Stated.

State Dept. review completed

ASIAN-AFRICAN LEGAL
CONSULTATIVE COMMITTEE

SEVENTEENTH SESSION, KUALA LUMPUR (MALAYSIA)
FROM 28TH JUNE TO 5TH JULY, 1976

STUDY

ON THE

REVISED SINGLE NEGOTIATING TEXTS

Prepared by:
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NOTE BY THE SECRETARY-GENERAL

The Law of the Sea has been under consideration of this Committee since its Twelfth (Colombo) Session held in 1971, the main purpose of the Committee's work being to assist the member Governments of the Committee and other Asian-African Governments to prepare themselves for the Third United Nations Conference on the Law of the Sea. With this in view, extensive preparatory material and documentation was prepared and compiled by the Committee's Secretariat and discussions were held in the Committee's Thirteenth, Fourteenth and Fifteenth Regular Sessions held in Lagos, New Delhi and Tokyo respectively to enable Governments to have full and frank exchange of views on some of the important issues. In addition, meetings of the Sub-Committee of the Whole on the Law of the Sea were held during inter-sessional periods in 1971, 1972 and 1973 and a special study group on landlocked States had met and prepared certain draft propositions on issues relating to that subject which were considered by the Sub-Committee of the Whole and later at the Tokyo Session. The work during the initial period followed the pattern of preparatory work in the Sea-Bed Committee and some of the proposals on important issues like the Economic Zone and Archipelagos had their origin in the deliberations of this Committee. At the Tehran Session the Committee reviewed the work of the Third United Nations Conference done at Caracas and deliberated upon several issues of importance which arose out of discussions at the Caracas Session.

During the Geneva Session of the Conference on the Law of the Sea held in the spring of 1975, the Chairmen of the three Main Committees were requested to prepare Single Negotiating Texts covering the topics entrusted to each Committee. It was made clear that the texts should take account of all the formal and informal discussions

held upto that time and that the texts would be informal in character without prejudicing the position of any Delegation, nor would they represent any agreed text or accepted compromise. The Single Negotiating Texts were thus intended primarily to provide a basis for negotiations.

The Secretariat of the Asian-African Legal Consultative Committee made a detailed study of the provisions of the Single Negotiating Texts with the object of bringing out the main issues which needed to be considered in the process of negotiations. Detailed analysis of the provisions of the single texts were attempted in the Secretariat's study with due reference to the various proposals made before the United Nations Sea-Bed Committee and at Caracas. These studies were taken as the basis of discussion at the Meeting of the Sub-Committee of the Whole on the Law of the Sea held at New Delhi during February 1976. A consensus was reached at that meeting that the future consideration of the subject should be done primarily on the basis of the Single Negotiating Texts as far as possible and proposals for alteration or modification of the provisions of the text should be such as are likely to be generally acceptable and are not mere reiteration of the national positions.

At the fourth session of the United Nations Conference on the Law of the Sea held in New York from the 15th March to the 7th May, intensive discuseions were held on the basis of the Single Negotiating Texts leading to the formulation of certain revised texts in regard to the work of the three Main Committees known as the Revised Single Negotiating Texts to serve as the basis for further negotiations. In addition, the President of the Conference has drawn up and presented in accordance with the decision of the Conference a Single

Negotiating Text on settlement of disputes a topic which had not been considered earlier.

It would be seen from a perusal of the revised texts that whilst certain basic changes have been made in the Revised Text in regard to Committee I matters and provisions on Settlement of Disputes are now there are no substantial changes in the Revised Text in regard to matters considered by Committees II and III as compared to the provisions of the Original Single Text.

In the present Study an attempt has been made to focus attention to some of the important changes made in regard to Committee I matters and to discuss the main issues on Settlement of Disputes. This may be considered as a supplementary study to be taken along with the studies prepared on the provisions of the Single Negotiating Texts which were made available to member Governments in February 1976. The background of the various provisions in the Single Text, and reference to the proposals on each issue will be found in the previous studies prepared by the Secretariat.

P A R T I

Part I of the Revised Single Negotiating Text (hereinafter referred to as the "Revised Text") relates to the question of exploration and exploitation of the mineral resources in situ of the sea-bed, the ocean floor and the sub-soil thereof which lie beyond the limits of national jurisdiction and other related activities. This part has 63 articles, three Annexes and a special appendix. The Single Negotiating Text prepared by the Chairman of Main Committee I during the Geneva Session in 1975 (hereinafter referred to as the 'Single Text') had 75 articles including the final provisions of a Convention. The final provisions have been omitted from the Revised Text as it is now generally agreed that there is to be one Convention covering the entire field of the Law of the Sea and the sea-bed. The various provisions in the Revised Text may be said to fall under the following heads:-

1. Interpretation (Article 1);

2. General Principles concerning the Area and its resources (Articles 2,3,4,5,6,7,8,13,14, 15,16,17,18,19 and 21);

3. Principles and provisions concerning activities in the international sea-bed area in regard to the resources (Articles 3,7,9, 14,18,21,22 and 23);

4. Other related activities in the area (Articles 10, 11 and 12);

5. Establishment powers and functions of the international sea-bed authority and its various organs (Articles 20, 24 to 32 and 41 to 45);

6. Settlement of Disputes (Articles 33 to 40);

7. Finance (Articles 46 to 51);

8. Status, immunities and privileges of the authority (Articles 52 to 60);

9. Suspension of the rights of members (Articles 61 and 62); and

10. Provisional application (Article 63).

Annex I contains the basic conditions for prospecting, exploration and exploitation in the area. Annex II contains the Statutes of the Enterprise which is the organ of the Authority for carrying out activities in the area in regard to the resources. Annex III contains the statutes of the Sea-Bed Dispute Settlement System and the Special Appendix which has two alternative approaches is on financial arrangements in regard to contracts for exploration and exploitation of the resources.

The scheme of arrangement of the various articles and annexes in the Revised Text generally follow the pattern of the Single Text and the Annexes II and III which were left blank in the Single Text have now been completed in the Revised Text. It has been pointed out in the note of the Chairman that whilst a good deal of discussion took place on the provisions of Annex I, the provisions of Annexes II and III as also the Special Appendix in the Revised Text had hardly been discussed.

Although the Revised Text retains the basic pattern of the Single Text in regard to the arrangement of the various provisions, there are certain significant changes in the Revised Text, which require careful consideration.

One of the fundamental issues which needs to be examined is as to how far the concept of common heritage of mankind in regard to the resources of the sea-bed area proclaimed in the Declaration adopted by the General Assembly on December 17, 1970, has been given effect to in

the practical application of the provisions of the Convention in regard to the activities in the area, that is to say how far the provisions of Article 22 and paragraphs 3, 8(d) and 12(2) of annex I are compatible with the concept of common heritage of mankind. It would also be for consideration as to whether any portion of annex I, in regard to matters of principle should not find place in the main body of the Convention. The next connected question of importance is the economic aspects of exploitation of the mineral resources and the effects of such exploitation on the economy of the countries who are producers of landbased minerals (Article 9).

The other questions of importance which may be considered are:-

1. Definition given to the expression "Activities in the Area in Article 1 and the Definition of "Resources".

2. Structure, Powers and Functions of the various organs of the Authority including the Enterprise (Articles 24 to 32, 41 and Annex II).

3. Financial (Articles 46 to 51, Annex II and Special Appendix).

4. Settlement of Disputes (Articles 33 to 40 and Annex III).

These issues are discussed below:-

ACTIVITIES IN THE AREA IN REGARD TO THE RESOURCES AND THE PRINCIPLE OF COMMON HERITAGE

The practical effect of the General Assembly Declaration of 17th December 1970 which declares the resources of the international sea-bed area as the common heritage of mankind is that the rich mineral deposits in the sea-bed and sub-soil which lie beyond national jurisdictions should be available for the

benefit of the international community as a whole which is now possible due to technological advances. The primary object of part I of the Convention is to give effect to the General Assembly Declaration and work out the details for the purpose.

As a result of the discussions in the Sea-bed Committee and the three Sessions of the Conference on the Law of the Sea held at Caracas, Geneva and New York, certain basic concepts have crystallized. These are as follows:-

(a) The resources of the area are the common heritage of mankind and are vested in mankind as a whole and consequently no individual State can claim or exercise sovereignty or sovereign rights over any part of the area or its resources. These principles will be found incorporated in Articles 3 and 4(1) of the Revised Text and paragraph 1 of Annex I;

(b) An international authority which is to be established under the Convention is the organization which shall act on behalf of the mankind as a whole in regard to the resources of the area and that it is through this organization that State parties shall organize and control activities in the area. This principle can be spelt out from the provisions of Article 21(1) and paragraph 1 of Annex I;

(c) Activities in the area shall be carried out for the benefit of mankind as a whole and taking into particular consideration the interests and the needs of the developing countries. This would be found in the provisions of Articles 7 and 18 of the Revised Text;

(d) Although the resources as such of the area being vested in the mankind as a whole are not subject to alienation, the mineral extracted can be alienated in the manner provided for in the Convention. This follows from the provisions of Article 4(2), paragraph 1 of Annex I and Article 1 clause (iii). It is not very clear whether it is necessary from a particular point of view to make any distinction between resources of the area and the minerals

extracted from it. It is obvious that in order to achieve the objective underlined in the United Nations Declaration, minerals would have to be extracted, processed and sold so that the proceeds may be available for the benefit of the entire international community; and

(e) The activities of the area in regard to extraction of the mineral resources have to be so conducted as to prevent adverse effects on the general economy of countries who are producers of landbased minerals of similar type, the object being to foster the healthy development of the world economy and a balanced growth in international trade. This is clear from the provisions of Article 9 of the Revised Text.

The above principles being generally recognized and incorporated in Articles 3, 4, 5, 6, 7, 8, 9, 18, 21 and paragraph 1 of annex I, it is to be seen how far these principles are given effect to in the other provisions of the Revised Text which give the details regarding the activities to be undertaken in the international sea-bed area.

Apart from these general principles there is also a general consensus that there should be scientific research carried out in the area, arrangements should be made for transfer of technology in regard to the area and the activities of the area shall be so carried out as to prevent pollution of the marine environment. The principles in regard to these matters are embodied in Articles 10, 11, 12 and 16.

Principle of Common Heritage

As regards the concept of common heritage of mankind as adopted in the General Assembly Declaration, it may be pointed out at the outset that it is not the same as the concept of the open sea or the doctrine of res nullius. The concept of open sea as developed in traditional international law meant that all nations had

access to the seas outside territorial waters both in regard to navigation and exploitation of its resources. This enabled the big maritime powers to traverse freely all parts of the seas and to exploit the wealth of the oceans to the extent possible on the basis of available technology. The doctrine of res nullius which was applied in regard to land territory enabled stronger nations to annex land on the basis of first discovery in those areas which were not populated by "civilized people" according to the traditional concepts of international law. It seems to be clear that the evolution of the doctrine of common heritage of mankind was to override what in theory was considered to be free for all in the open sea and to do away with the concept of appropriation by discovery in regard to the wealth of the oceans in so far as the resources of the bed and the sub-soil thereof was concerned. The principle of common heritage which is akin to the concept of res communis means that the resources of the sea-bed area belong jointly to all the nations to be exploited for their common benefit which is quite different from the concept that each nation singly has equal right to explore or exploit the sea-bed. If it is argued that each nation has such right of access individually, then there was no need to develop the principle of common heritage because even before that Declaration, each country had at least in theory full right of access to any part of the ocean outside national jurisdictions and to exploit the resources thereof. It was realised that the concept of open seas in the light of modern technological advances would benefit only a few nations because in actual practice it would be only those nations who are in possession of technical knowhow who would have been in a position to exploit the resources of

the sea-bed and it was in this context that the new concept of common heritage of mankind was evolved. The only way by which this concept can be translated into practice would be to treat the resources of the Area as being under joint undivided ownership of all nations as expressed in paragraph 1 of Annex I. If this is so, then the activities in the area have necessarily to be under effective control of the international authority acting on behalf of the entire international community and activities by individual States or their nationals cannot be permitted except when doing so on behalf of the Authority. It would be seen that whilst lip service has been paid to the principle of common heritage in Article 3 of the Revised Text as well as in paragraph 1 of Annex I, the changes brought about somewhat unobtrusively in Article 22 read with the provisions of paragraph 3 and 8(d) of annex I may well bring about a complete negation of the principle of common heritage. What is now contemplated in the Revised Text is that there should be an activity described as prospecting which can be undertaken by any State under certain circumstances and that an applicant for a licence for exploration and exploitation would have to offer certain viable areas for the purpose in respect of one half of which the licence will be granted. This would mean that in practice the applicant would have to be a party who already has technical data in its possession about the resources of the Area. Thus it is only a very small number of highly developed States who are in possession of technical data and have adequate resources in the shape of technological knowhow and trained personnel who would be in a position to undertake the work of prospecting and also to apply for licences. In this manner one half of the entire exploitable areas would be

with them as licencees of the authority for the entire economic life of the mining areas. The concept of the common heritage would thus in actual practice become a dead letter.

The General pattern in regard to the activities in the area in relation to the resources is set out in Article 22 of the Revised Text which is somewhat different from what was provided for in Article 22 of the Single Text.

Under the provisions of this article as given in the Revised Text activities in the area shall be conducted directly by the Authority or in association with the Authority or under its control by States parties or State Enterprises or persons natural or juridical which possess the nationality of States parties or are effectively controlled by them or their nationals, when sponsored by such States. This means that the activities in the area can be conducted in one of three ways, namely:-

(1) By the Authority itself through the Enterprise in accordance with its statutes (See article 41 and paragraph 7 of annex II);

(2) By the authority in association with a State party or one of its nationals natural or juridical as contemplated in paragraph 9 of annex I; and

(3) By State parties or State Enterprises or persons natural or juridical sponsored by such States under the control of the authority in accordance with the conditions specified in annex I.

This article further provides that the activities in the area shall be carried out in accordance with a formal written plan of work to be drawn up by the Technical Commission and approved by the Council (See Article 28 caluses (ix) and (x) and Article 31 caluses (v) and (xi).

Article 23 enjoins the authority to avoid discrimination in the matter of granting of opportunities for activities in the area which seems to imply that in allowing States parties or State Enterprises to carry on activities, there should be no discrimination. It is clarified here that any special consideration given to developing countries will not be deemed to be discrimination. These two provisions, namely, Articles 22 and 23 appear to be the only provisions in the body of the Revised Text which deal with the question as to who should carry on the activities in the area. A few suggestions may now be made with regard to the provisions of Article 22. It would appear that all the three methods for undertaking activities in the area have been put on the same footing in this Article which does not appear to be quite appropriate. It is suggested that the primary responsibility for the activities in the area should be that of the Authority acting through the Enterprise in view of the accepted principle that the resources of the area vest in the mankind as a whole and have to be exploited for their benefit as also the principle that the Authority is the agent of the international community for the purpose of administration of the Area (See Articles 3, 4, 6 and paragraph 1 of annex I). If however the Authority is unable to undertake all the activities in the initial stages, then the other alternative methods, namely, the authority acting in association with a State party or State Enterprise or the Authority permitting States parties or their nationals to act can be resorted to. It is further suggested for consideration that after a certain stated period it would be the authority only acting through the Enterprise which would be competent to undertake and carry on activities in the area. During the interim period

however the three methods indicated above may be followed. It would be seen that the concept of an interim period has already been recognized in Article 9 of the Revised Text.

The various provisions of annex I which set out the conditions for activities in the area may now be considered.

Prospecting

In the first place it may be pointed out that a new stage of operations described as prospecting has been introduced in this annex in addition to the activities of exploration and exploitation. It is significant to note that in the interpretation clause (Article 1 clause (ii)) activities in the area has been confined to exploration and exploitation and does not obviously include prospecting. In paragraph 3 of the Annex which deals with this matter it is stated that "the authority shall encourage the conduct of prospecting of the area". Although the prospector is to furnish certain undertaking to the Authority in regard to prospecting and has to notify the Authority of broad area or areas in which prospecting is to take place, there is no provision for obtaining of any licence from the Authority. It is also stipulated that prospecting may be carried out by more than one prospector in the same area or areas simultaneously. It is not very clear as to the need for prospecting as a prior stage to exploration, but prospecting in the context would appear to contemplate a general survey of the area. Such activities should be undertaken by the Authority itself through the Enterprise or by a party on behalf of the authority. It would be undesirable to leave the work of prospecting as a sort of free for all as appears to be contemplated in paragraph 3 of the Annex. In any event the work

of prospecting should be controlled by the Authority by means of issue of licences setting forth the conditions, rules and regulations therefor with the definite obligation on the prospector to report the results of such prospecting to the Authority. The provision of paragraph 3(b) which states that prospecting shall not confer any preferential, proprietary or exclusive rights on the prospector with respect to resources or the minerals, cannot offset the inherent defect in the scheme of paragraph 3 permitting almost unrestricted prospecting in the Area which will enable in practice only a few highly developed countries to undertake such activities. It may be added that in regard to prospecting for minerals in land, prospecting is always done under a licence issued by the State or the owner of the mineral where the law recognizes private ownership in respect thereof under appropriate terms and conditions.

Paragraph 12 of Annex I contemplates that the authority shall adopt and uniformly apply rules, regulations and procedures for prospecting in regard to operations, financial matters, duration of activities, etc. There is one point which requires comment here. It has been provided that the prospecting shall be without time limit. This seems to be on the basis that any party is free to do prospecting in any Area at any time but if prospecting is to be done by a party in a given area under a licence then the period of such prospecting should be specified in the licence. Furthermore if prospecting is to be carried out by more than one prospector in the same area or areas, it may lead to confusion and disputes. The best solution appears to be that all prospecting should be done by the Authority acting through the Enterprise or on its behalf by a licensee during an interim period. The licences should indicate

the area of prospecting and the duration for which the licence is granted. It would also be desirable to give prospecting licences to only one applicant at one time, in respect of a particular area.

Exploration and Exploitation

Paragraphs 2 and 4 to 18 of annex I deal with the question of the activities in relation to exploration and exploitation. It is stated in paragraph 19 that these provisions shall apply also to the Enterprise, except where they are specifically excluded. There are certain matters in these provisions which require examination. In paragraph 2 it is provided that title to the minerals shall normally pass upon recovery of the minerals pursuant to a contract of exploration and exploitation. The provision is not very clear. If we proceed on the basis that the title to the minerals vest in the mankind as a whole on whose behalf the authority is to act, the passing of title to any other person natural or juridical would depend on the terms of the contract between the Authority and the contractor.

The most important provision which requires careful scrutiny is contained in clause (d) of paragraph 8 in regard to selection of applicants. This is a new provision which was not found in the Single Negotiating Text. This provision contemplates that an applicant for a contract for exploration or exploitation is required to indicate the co-ordinates of an area of which one half will be designated by the authority as a contract area and alternatively the applicant may submit two areas of the same size and equivalent commercial value one of which will be designated by the authority as a contract area. The implications of this provision are that the applicant would have to be in possession of the necessary data

which would enable it to indicate viable areas for exploration and exploitation and one half of such areas will necessarily go to the party which is in possession of the data. This would mean that one half of all viable areas would be exploited by the few highly developed countries which are in possession of technical data. The remaining half would then be left for the Authority to decide whether it would exploit the same itself or exploit such areas in association with others or give contract in respect of them to other parties. It may be noted that the draftsmen of the Revised Text had in view the fixation of a quota or anti-monopoly provision but that is yet to be discussed. It may however be stated that even a quota or anti-monopoly system would not fully cover the interests of countries other than those which are highly developed. Having regard to the various principles which are now generally accepted and set out in the earlier part of this note, it would seem that the only alternative in the interest of the international community would be to entrust the entire function of exploration and exploitation to the Authority itself and even during an interim period the authority should first collate the relevant data on the basis of prospecting carried out by itself or through prospecting licences, and thereafter decide for itself, the viable areas for exploration and exploitation and those which should be made available for granting of contracts. Applications should then be invited and entertained on their own merits. This would be a fair system because even here the developed countries are likely to get a substantial portion of the contracts by reason of their possession of technological knowhow.

Another provision of the Annex to which attention must be drawn is with regard to the duration of the contracts. It would be seen that

paragraph 12(2) of Annex I provides that the duration of exploitation should be related to the economic life of the mining project taking into consideration such factors as the depletion of the ore, the useful life of mining equipment, processing facilities and commercial viability. It is further provided that the total duration of exploitation should also be short enough to give the authority an opportunity to amend the terms and conditions of the contract at the time it considers renewal. The practical effect of these provisions would be that the contract given in favour of a party would continue as long as the mineral deposits in a particular area are not exhausted although the authority could revise the terms and conditions of the contract at intervals. When this provision is taken together with what is contained in paragraph 8 it would mean that one half of all viable units would remain to be exploited as long as such exploitation is profitable for the few highly developed countries who have been granted such contracts. It is suggested that all contracts should terminate at the expiry of a specified period when the contractor should hand over the equipment and other machinery which is used for such exploitation to the Authority on terms to be settled. A necessary corollary to this would be to indicate the quantity which can be extracted from each mining area during the period of the contract. This matter is also closely linked with the economic aspects of production as envisaged in Article 9 and paragraph 21 of annex I. It may also be mentioned that whilst determining the areas to be exploited from time to time and in giving of contracts the Authority should keep in view several factors namely: (a) Economic effects of Exploitation; (b) the progressive increase of activities by the Authority itself in undertaking exploitation directly through the Enterprise

leading to exclusive activities by the Authority itself and (c) Provision for making available certain areas by developing countries in the future when their technical knowledge advances. The provisions of paragraphs 8(d) and 12(2) of Annex I are incompatible with these considerations.

ECONOMIC EFFECTS OF EXPLOITATION OF MINERALS ON WORLD ECONOMY

On the basis of available technical data on the mineral resources of the international sea-bed area, it appears that when such mineral resources are extracted, processed and marketed, it is bound to have some effect on world markets in regard to such minerals. It has been noted that the type of mineral which is to be found in the sea-bed is also available in land-based mines and in the continental shelf. The land-based mines are mostly in developing countries who earn valuable foreign exchange by exportation of such minerals. It is anticipated that once the mineral extracted from the international sea-bed area is available in the market the prices of land-based minerals may fall as a result of the laws of supply and demand and to that extent the exporting countries of such minerals are bound to suffer by reason of adverse effect on their economy. The consuming countries in regard to such minerals would naturally benefit from the availability of such minerals in larger quantity from the international sea-bed area. It has therefore been advocated that the activities in regard to extraction of mineral resources from the international sea-bed area should be so conducted as to protect the interests of exporting countries of the land-based material, but, at the same time take into account the interests of the consumer. It is in this background that the provisions of

Article 9 of the Revised Text have been formulated. The three main principles are embodied in paragraphs 1, 3 and 4 of Article 9 which may be formulated as follows:-

(a) The activities in the area shall be conducted in such a manner as to foster the healthy development of world economy and a balanced growth in international trade;

(b) The activities should increase availability of resources to meet world demand; and

(c) Such activities shall not be so conducted as to have adverse economic effects of a substantial decline in the mineral export earnings of developing countries for whom export revenues for the same type of mineral as exploited in the area represent a significant share of their gross domestic products or foreign exchange earnings.

In order to achieve these objectives paragraph 4 of this article contains certain provisions which may be summarized as follows:-

(a) To facilitate the growth, efficiency and stability of markets for the class of commodities produced from the area at prices remunerative to producers and fair to consumers, through existing forums or new arrangements or agreements with the participation of all affected parties including the Authority;

(b) A compensatory system of economic adjustment assistance to off-set the adverse effects on developing countries;

(c) During an interim period of twenty years which may be extended by another five years beginning on 1st January 1980 or immediately upon the commencement of commercial production under a contract, whichever comes earlier, the authority should limit total production in the area so as not to exceed the projected cumulative growth segment of the nickle market during that period.

The cumulative growth segment is to be determined in accordance with paragraph 21 of Annex I which provides that the base for the purpose of computation shall be the highest annual world demand during the three year period,

immediately preceeding the commencement of the interim period. After the base figure is determined, the rate of increase projected for the interim period of 20 to 25 years shall be the average annual rate of increase in world demand during the twenty year period prior to the entry into force of the Convention subject to a minimum increase rate of 6% per annum. This means that the rate of production from the international sea-bed area is to be determined during the interim period of 20 to 25 years on the basis of a projected demand and the available supplies from other sources. For the purpose of the projected demand the highest demand during a period of three years prior to the commencement of the interim period is to be taken as the base which is to be increased annually on the basis of the average increase during the twenty years prior to the coming into force of the Convention, but subject to a minimum rate of increase of 6% per annum. The projected demand for the purpose of calculation, particularly the prescription of the minimum rate of 6% may not be appropriate, particularly because the demand for mineral is bound to vary during a period of 20 to 25 years and it cannot always be presumed that the demand for a particular category of mineral will increase. Furthermore the growth segment of the nickle market cannot always provide the guide for all minerals. There is one sentence in clause (ii) of paragraph 4 of Article 9 which is not very clear and this provides that production levels under existing contracts shall not be affected by the interim limit, but shall be included in the calculation of the stated production limits. In the first place there cannot be any existing contracts between the Authority and any other party prior to the coming into force of the Convention. Consequently the question of production

levels under existing contracts in this clause seems to be inappropriate and furthermore there seems to be no reason for making an exception in regard to any contract so far as production limits are concerned. The provisions of paragraph 21 of annex I do not therefore seem to be appropriate.

It would be seen that Article 28 clause (ix) empowers the Council to adopt necessary and appropriate measures to protect against adverse economic effects of exploitation of the sea-bed resources and Article 30 paragraphs 3 and 5 empower the Economic and Planning Commission in consultation with various other competent organs to review the trends of and factors affecting supply and demand and prices of raw materials which may be obtained from the area and to investigate into situations and make recommendations thereon upon its attention being drawn by any developing country to the fact that the activities in the area are likely to lead to a substantial decline in its mineral export earnings. Now if the production limits are to be rigidly set under the provisions of clause (ii) of paragraph 4 of Article 9 read with paragraph 21 of Annex I, the above functions of the Economic and Planning Commission would be redundant during the interim period.

Whilst the general principles embodied in Article 9 paragraphs 1, 3, 4(i) and 4(iii) may be considered appropriate, clause (ii) of paragraph 4 definitely requires reconsideration. It is suggested that so far as clause (iii) of paragraph 4 of Article 9 is concerned, the compensatory system envisaged therein should be elaborated. In so far as clause (ii) is concerned, the system of production control should be welcome but instead of laying down a rigid formula, it would be preferable if the production limits on a three year basis is determined by the Council on the

advice of the Economic and Planning Commission in the context of Article 30(3).

OTHER RELATED ACTIVITIES

The other related activities in the area are scientific research, transfer of technology and protection of marine environment. Scientific research is the subject matter of Article 10 which provides that the Authority shall promote and encourage the conduct of scientific research in the area. It is further provided that the Authority may itself conduct scientific research in the area and may enter into agreements for that purpose. Scientific research being a matter which is to be conducted for the benefit of mankind as a whole should appropriately be undertaken by the Authority or under its auspices. It would be seen that one of the functions entrusted to the Technical Commission under Article 31 is to make recommendations to the Council with regard to the carrying out of the Authority's functions with respect to scientific research and transfer of technology. It is suggested that Article 10 should be amended to provide that the scientific research shall be carried out by the authority acting by itself or through agreements entered into for the purpose, so that States parties do not carry on such activities on their own. Article 11 should also be amended to provide that the transfer of technology should be done through the authority as was the position in the Single Text. In regard to the protection of the marine environment, the functions are vested in the authority under Article 12 and as a consequence provision has been made for the Technical Commission and the Rules and Regulations Commission to act in the matter (See Articles 31 and 32).

STRUCTURE AND NATURE OF FUNCTIONS OF THE AUTHORITY AND ITS VARIOUS ORGANS

Articles 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 41 and 42 are the main provisions of the Revised Text on this topic. Article 20 establishes the international sea-bed authority with the membership of all States parties to the Convention and Article 24 enumerates the various organs of the authority, namely, an Assembly, a Council, a Tribunal, a Secretariat, the Enterprise and such subsidiary organs as may be found necessary. Article 25 prescribes the composition of the Assembly consisting of all the members of the authority. The Assembly is to meet in regular sessions every year and in such special sessions as may be convened with each member having one vote. The quorum, the voting procedure, as also the requisite majority needed for decisions on questions of substance or procedure have also been set out in this article. Attention is invited to paragraphs 8, 9 and 11 of this article. Paragraph 8 which provides that any decision of the Assembly on any important questions of substance shall come into effect ninty calendar days following the Session in which it was adopted, but, if one third of the members of the authority plus one give notification of their objection to that decision, the matter has to be reconsidered by a special session unless the decision itself had been reached on a consensus. This provision is new and was not found in the Single Text. Paragraph 9 states that when a matter of substance comes up for voting for the first time, the President may and shall if requested by at least fifteen representatives defer the question of taking a vote on such a matter for a period not exceeding five days. This provision is also new. Paragraph 11 provides for voting being deferred on any matter pending reference to the Tribunal for an advisory

opinion on the legality of the proposed action if a request is made to the President supported by not less than one fourth of the members of the authority. These provisions require scrutiny.

Article 26 which sets out the powers and functions of the Assembly describes it as a supreme organ of the authority having the power to prescribe the general policies on any questions or matters within the competence of the authority by adopting resolutions and making recommendations. The powers of the Assembly are enumerated in paragraph 2 of this Article which include the question of assessment of the contributions of States parties to the administrative budget of the authority, adoption of financial regulations of the authority upon the recommendations of the Council and adoption of criteria, rules, regulations and procedure for the equitable sharing among States parties of financial and other economic benefits derived from the activities in the area. It would be seen that decisions on all important financial questions are to be taken by the Assembly which is the representative organ of the member States. Paragraph 3 of this article is important and needs to be considered. In that paragraph it is stated that in exercising its powers and functions the Assembly shall have particular regard to Article 24 paragraph 4 which provides that the principal organs of the authority shall avoid taking any actions which may impede the exercise of specific powers and functions entrusted to another organ. It may be stated that in the Single Text Article 26(3) had provided that the residual powers would be vested in the Assembly which has now been omitted from the Revised Text. The provisions of paragraph 3 of Article 26 have also to be considered in relation to the powers and functions of the Council and in the context that the Assembly is the supreme

organ of the Authority. Although it is desirable to prevent any conflict between the various organs of the authority in the discharge of their respective functions, it is for consideration whether the Assembly as the supreme organ of the authority and being the only body on which all the members are represented, should be given some power of general control over the activities of other organs.

Article 27 prescribes the composition of the Council which is to be the executive organ of the Authority. The Council is to meet as often as the business of the authority may require but not less than three times a year and decisions on important questions are to be taken by a majority of two-thirds plus one of the members present and voting, whilst decisions on the other questions are to be taken by a majority of the members present and voting. The powers and functions of the Council are set out in Article 28 and one important matter to which attention may be drawn is contained in paragraph 1 of this Article which states that the Council shall have the power to prescribe the specific policies to be pursued by the authority on any questions or matters within the competence of the authority and in a manner consistent with the general policies prescribed by the Assembly. The provisions of this paragraph may result in some overlapping of powers between the Assembly and the Council. The specific powers and functions entrusted to the Council are enumerated in paragraph 2 of this article from which it would be seen that its main functions are in regard to control of activities in the area, for example, clause 6 of this paragraph provides for the Council to transmit to the Assembly the reports of the Enterprise with its recommendations, clause 8 empowers the Council to issue general policy directives to the Enterprise, Clause 9 authorizes it to approve on behalf of the authority formal

written plan of work for conduct of activities in the area. Clause 10 empowers the Council to exercise control over the activities in the area, Clause 11 enables the Council to adopt necessary and appropriate measures to protect against adverse economic effects of exploitation of the resources of the area and Clause 13 contemplates a review by the Council about the collection of all payments to be made by or to the authority in connection with the operations. The Council is also empowered under clause 12 of this paragraph to adopt and apply rules, regulations and procedures recommended by the Rules and Regulations Commission.

The Revised Text contemplates constitution of three organs of the Council, namely, an Economic and Planning Commission, a Technical Commission and the Rules and Regulations Commission. The Economic and Planning Commission, whose constitution and functions are given in Article 30, is to be composed of eighteen experts appointed by the Council. Its main function appears to be to review the trends of and factors affecting supply, demand and prices of raw materials which may be obtained from the area. The Technical Commission composed of fifteen members having experience in the management of mineral resources, ocean and marine engineering, etc., whose powers and functions are enumerated in Article 31, is concerned with scientific research, transfer of technology, supervision of operations with respect to activities in the area and taking of action in relation thereto. The Rules and Regulations Commission which is also to compose of fifteen members is mainly concerned with the formulation of rules and regulations and in assisting the Technical Commission in preparing assessments of the environmental implications of activities in the area (See Article 32).

The constitution and powers of the Tribunal as well as the procedure to be followed are contained in Articles 33 to 40 which would be separately discussed.

Article 41 provides for the establishment of the Enterprise as the organ of the Authority for conducting activities in the area directly on behalf of the authority. Its general powers and functions are set out in Annex II. It is provided therein that the members of the Enterprise are the members of the Authority. The Enterprise has been given a separate international legal personality and it is provided that the Enterprise shall not be liable for the acts or obligations of the authority nor would the authority be liable for the acts or obligations of the Enterprise. The Enterprise however is to act at all times subject to the policy directives and control of the Council which is the executive organ of the Authority. The composition, powers and functions of the Enterprise have been separately provided for in Annex II as it is the commercial venture of the authority. The structural pattern envisaged for the Enterprise seems to be on the same lines as government undertakings, corporations and companies which are wholly owned by Government and operated for commercial purposes. Such undertakings, corporations or companies are generally treated as separate entities and not part of the Government as such, even though under the ownership, supervision and control of the Government concerned. Here the same pattern is followed with the Enterprise having its own board of management, its executive and technical staff and its separate finances. Under its statutes given in Annex II the Enterprise is to have a Governing Board like government companies under various municipal legal systems responsible for the conduct of the operations of the Enterprise.

The Governing Board is to have thirty six members elected by the Assembly. The principal officer of the Enterprise is the Director General who is to be appointed for a period of five years. He is the Chief Executive of the Enterprise and shall conduct operations under the direction of the Governing Board. The provision however of making the Director General as the Chairman of the Governing Board does not appear to be appropriate, because the Chief Executive who has to work under the directions of the Governing Board ought not to be its Chairman. The financial pattern of the Enterprise is provided for in paragraph 6 of the annex which states that the funds of the Enterprise shall comprise of:-

(1) Amounts determined from time to time by the Assembly out of the special fund;
(2) Voluntary contributions made by States;
(3) Amounts borrowed; and
(4) Other funds made available to the Enterprise.

It is significant that clause (d) of this paragraph states that the funds of the Enterprise shall be kept separate and apart from those of the authority which is consistent with the general pattern of the Enterprise having a separate identity. As regards its functions, paragraph 7 of Annex II clearly provides that the Enterprise shall be the organ responsible for activities in the area carried out directly by the authority and it shall carry out activities including scientific research and promotion thereof. There is one matter which needs to be considered that is whether there is any inconsistency in describing the Enterprise as an organ of the authority and at the same time giving it a separate juridical personality with its own Governing Board, its executive, its separate finances, and the provision for exclusion of liability of the authority in regard to the acts and obligations of the Enterprise.

The Secretariat whose composition powers and functions are provided for in Articles 42 to 45 is to be headed by a Secretary General to be appointed by the Assembly upon the recommendation of the Council. The provisions of these articles do not appear to need much scrutiny.

On an analysis of the composition, powers and functions of the various organs of the authority as contained in the Revised Text with the exception of the Tribunal, it seems that there are only two questions which need consideration, namely:-

(1) Whether there are any areas on which the powers of the Assembly and the Council may overlap and whether the Assembly should be given any control over the activities of the other organs of the authority; and

(2) Whether the constitution powers and functions of the Enterprise as a separate entity as envisaged in annex II is consistent with the concept of the Enterprise being an organ of the authority itself.

FINANCE

There are four aspects concerning finance which would need to be studied in regard to Part I of the Convention. These are as follows:-

(1) General Budget concerning income and expenditure of the authority;

(2) Finances concerning the activities of the Enterprise;

(3) Financial arrangements to be made with the Contractors; and

(4) Determination of the allocable surplus and distribution thereof among member States.

In regard to the first matter, it is obvious that the initial finances of the authority would have to come from contributions of member States. This is

clearly contemplated in paragraph 2 clause (iv) of Article 26 which provides that one of the powers and functions of the Assembly shall be the assessment of contributions of States parties to the administrative budget of the authority in accordance with an agreed general assessment scale until the authority shall have sufficient income for meeting its administrative expenses. In addition voluntary contributions and borrowing subject to the financial regulations that may be adopted by the Assembly under Article 26 is also contemplated in Article 50. The financial pattern also proceeds on the basis that at some stage the authority would have sufficient income of its own arising from activities in the area including any excess of the revenues of the Enterprise over its expenses and costs (See Article 46 and Article 26(2)(iv)). It is also clear that until such time as the Enterprise is in a position to undertake all activities of exploitation and exploration the bulk of the revenues of the authority would need to come from contractors by way of payment of royalties and licence fees.

As regards the expenses of the authority there is to be an annual budget which is required to be passed by the Assembly (See Articles 47, 48 paragraph 1 and Article 36 paragraph 2 clause (vi)).

As regards the finances of the Enterprise the matter is provided for in annex II paragraph 6. This provides that the funds of the Enterprise shall comprise of:-

(i) Amounts allocated from time to time by the Assembly out of the Special fund;

(ii) Voluntary contributions made by States parties;

(iii) Amounts borrowed by the Enterprises; and

(iv) Other funds made available to the Enterprise including charges to enable it to commence operations as soon as possible.

It may however be pointed out here that amounts to be allocated from special fund may not be so readily available in the initial stages and that is why provision has been made for other funds in paragraph 6 of annex II to enable the Enterprise to commence its operations as soon as possible. There is nothing in the annex which gives any guide regarding the expenditure to be incurred by the Enterprise and how the net income of the Enterprise is to be determined for the purpose of allocation of the surplus pursuant to paragraph 5(e) of annex II.

As regards the financial arrangements with the contractors paragraph 9(d) of annex I is the applicable provision. The suggested contents of this sub-paragraph are set out in two alternative forms in the Special appendix which is attached to the Revised Text.

So far as the allocation of surplus which would be available for distribution among member States, Article 26 contemplates that the Assembly should decide upon the adoption of criteria, rules, regulations and procedures for the equitable sharing among States parties of financial and other economic benefits derived from activities in the area. This is also reflected in paragraph 2 of Article 49.

Considering the various provisions of the Revised Text on financial aspects, it seems that they would require a good deal of redrafting and revision. In the first place it is suggested that the financial provisions in the body of the Convention (Articles 46 to 50 of the Revised Text) should clearly spell out the following position:-

(a) The Assembly shall establish the general fund of the Authority to which should be credited the contributions received from member States and revenues derived from the operations in the area including licence fees,

royalties and the amounts transferred by the Enterprise in accordance with its statutues;

(b) The general funds can be drawn upon for meeting the expenditure of the authority and its various organs, except the Enterprise, in accordance with the budget approved by the Assembly;

(c) A special fund may be created with voluntary contributions by member States and borrowings. This may be drawn upon under the directions of the Assembly for the purpose of giving advance to the Enterprise and temporary advance to the general fund of the authority if required; and

(d) The available surplus in the general fund after meeting the expenses of the authority and provision for sufficient reserve as also provision for repayment of borrowed amounts with interest should be made available for distributing among member States in accordance with the principles to be formulated by the Assembly. The principles so formulated would take into account the contributions made by each member State towards the budget of the authority in the initial stages and the needs of developing countries including land locked States.

In annex II which deals with the finances of the Enterprise, which are to be kept separate from the general funds of the authority, paragraph 6 which sets out the composition of the funds of the Enterprise may be said to be by and large appropriate. However provision should be made regarding the expenses to be incurred by the Enterprise under its separate budget and the rules for determination of its profits for arriving at the surplus which is to be transferred to the general fund of the authority. This would no doubt be done after making provision for adequate reserves for the work of the Enterprise and provision for repayment of loans with interest.

In so far as paragraph 9(d) is concerned regarding the financial arrangements with the contractors, the provisions of both alternative A

and alternative B set out in the Special appendix can only be reviewed after a decision is made with regard to prospecting operations, the applicability of paragraph 8 of annex I and the period of duration of a contract. For example if prospecting is to be carried out on behalf of the Authority and under its licence, different considerations will apply from prospecting being done by an operator entirely on its own which is at present contemplated under the provisions of annex I of the Revised Text and on which basis it is provided in the Appendix that the expenses of prospecting will not be taken into account. Furthermore, duration of the contract is an important factor in making of financial arrangements with the contractor. Whilst there can be no objection to clauses 1 and 2 of paragraph 9(d) as given in part A of the special Appendix, it would be futile to go into the details without first reaching a consensus on the substantive aspects of the matter in Annex I regarding prospecting, applicability of paragraph 8 and the period of the contract.

SETTLEMENT OF DISPUTES

Articles 33 to 40 of the Revised Text deal with the question of settlement of disputes. These provisions correspond to Articles 32,33 and 57 to 63 of the Single Text. The statute of the Tribunal is provided for not in the main body of the text but in Annex III, presumably because the Tribunal is to function as an independent authority and also on the pattern of the statute of the International Court of Justice.

The scheme envisaged for settlement of disputes in these articles is that if any dispute between States parties arises regarding interpretation or application of the Convention regarding activities

in the sea-bed area, the parties to the dispute shall first seek a solution through consultation, negotiations, conciliation or other such means of their own choice. The modalities for these methods of settlement would no doubt be in accordance with the appropriate provisions of the Convention.

If the dispute however has not been resolved within one month of its commencement, Article 33(2) provides that any party to the dispute may institute proceedings before the Tribunal unless the parties agree to submit the dispute to arbitration in accordance with Article 40 of the Convention. Article 40 provides that if the parties to a dispute so agree they may submit the dispute to an Arbitration Commission composed of three members, each party to thedispute appointing one member on the Commission, whilst the Chairman is to be chosen by common agreement between the parties, failing which he is to be appointed by the President of the Tribunal. The procedure to be followed in the arbitration would probably be regulated by the provisions of the part of the Convention dealing with Settlement of Disputes. Attention however must be drawn to paragraph 3 of Article 40 which is not to be found in the Single Text. This provides that any of the parties to a dispute or the authority may prefer an appeal from the decision of the Arbitration Commission on any question of law arising out of such disputes. This is somewhat of a novel provision which is inconsistent with the concept of arbitration taking place by agreement of parties and it virtually brings in the compulsory jurisdiction of the Tribunal through the back door.

The compulsory jurisdiction of the Tribunal is contemplated in three categories of cases, namely,

(1) When any dispute arises between States parties concerning the interpretation or application of the Convention relating to activities in the international sea bed area, when such dispute has not been settled through consultation, negotiations, conciliation or other such means of their own choice within one month of its commencement and when the same has not been referred to arbitration;

(2) Any disputes between States parties or between a State party and a national of another State party or between nationals of different State parties or between a State party or a national of a state party and the authority or the Enterprise concerning the conclusion of any contract, its interpretation or application or other activity in the area which has arisen;

(3) A dispute wherein a State party questions the legality of measures taken by any organ of the Council or of the Assembly on grounds of a violation of the provisions of the Convention concerning the international sea-bed area, lack of jurisdiction, infringement of any fundamental rule of procedure or misuse of power.

In addition to the above, the Tribunal may render advisory opinion at the request of any organ of the authority and decide disputes in matters arising out of Article 44 concerning the performance of their duties by the Secretary General and the staff.

The first matter to be considered in regard to the jurisdiction and competence of the Tribunal is whether a compulsory procedure is acceptable in regard to settlement of disputes between States parties to the Convention as envisaged in clause (a) of paragraph 1 of Article 33 read with paragraph 2 of that Article. The further question which needs clarification is whether there should be a separate forum for settlement of disputes for interpretation of the Part I of the Convention.

The second question relates to settlement of disputes between States parties or a State party and a national of another State party or between nationals of different States parties or between a State party or a national or a State party and the

authority or the Enterprise in regard to any contract or its interpretation or application or other activity in the area as envisaged in Article 33(b). Reference of a disputes of this nature would seem to be quite appropriate because they arise out of a contract and the parties to the contract, even though they may be States, would be deemed to have agreed to a compulsory settlement procedure when they apply for and are granted contracts regarding activities in the area. Furthermore when the authority or any of its organs are involved in the dispute, it is all the more appropriate that such disputes should be settled by a Tribunal. The provision giving the right to an individual to approach the Tribunal might have been open to some objection, but there would be no substance in principle behind such objection having regard to the provisions of Article 35 which requires the sponsoring State of the natural or juridical person to intervene when proceedings before the Tribunal have been instituted by an individual, namely, a natural or juridical person.

There should also be no difficulty in accepting the position that the Tribunal should be competent to give advisory opinion at the request of an organ of the authority and also with regard to settlement of disputes arising out of the provisions of Article 44 because they concern the officials of the authority and their position ought to be safeguarded by means of recourse to a judicial authority like the Tribunal.

The provisions of Article 36 read with Clause (c) of Article 33(1) would require consideration. The provisions of this article enable a State party to question the legality of measures taken by any organ of the Council or of the Assembly

within one month of the publication or notification of the decision on grounds stated therein, namely, violation of the provisions of the Convention, lack of jurisdiction, infringement of fundamental rules of procedure or misuse of power and the Tribunal is given on such a complaint to declare the decision as void and also to determine measures to redress any damage caused. It is a matter for consideration whether the decision of the Assembly which is composed of representatives of all member States should be subject to the control of the Tribunal in this fashion which may nullify or delay the action taken by a representative body like the Assembly. In so far as other organs of the authority are concerned, although there may not be the same objection to the jurisdiction of the Tribunal in scrutinizing their actions, the matter needs to be carefully considered.

Article 36 also enables any national of a State party to bring a complaint before the Tribunal with regard to decisions of various organs of the Authority directed to that person or in the case of a person conducting or seeking a contract to conduct activities in the area or a decision which is of direct concern to that person. Here, the authority may request or give opportunity to the sponsoring State to participate in the proceedings. Nevertheless the matter to be considered is whether it is appropriate to subject the decision taken by any organs of the authority to a judicial check which may unduly interfere with the functioning of the organs of the authority and in any event may hold up or delay appropriate actions by those organs.

Article 37 provides for the enforcibility of the judgements and orders of the Tribunal which are to be final and binding. Article 38 empowers the Tribunal to adopt provisional measures

and Article 39 enables the Tribunal to seek the opinion of any organ of the Council regarding an issue falling within its competence. These provisions are unobjectionable if the tribunal's compulsory jurisdiction is accepted in principle.

The composition of the Tribunal consisting of eleven independent judges and the matters concerning the method of their appointment, qualifications, tenure of office, removal, filling of vacancies etc. are provided for in paragraphs 4 to 10 of Article 33. These provisions are also not objectionable and are elaborated in Annex III containing the statute of the sea-bed dispute settlement system, paragraphs 2 to 4.

Turning now to annex III there is one important matter to which attention has to be invited. Although there is no provision in the body of the Revised Text, annex III in paragraph 7 states that special chambers shall exercise the contentious jurisdiction of the Tribunal in any case in which either party requests that a special chamber shall be established and exercise such jurisdiction. The special chamber is like an Arbitral Commission, except that the machinery of the special chamber can be set in motion at the request of any party to a dispute. As has already been seen that article 33 of the Revised Text provides for compulsory jurisdiction of the Tribunal in the categories of cases enumerated therein and such disputes are to be determined by a bench consisting of not less than seven members of the Tribunal as per the provisions of paragraph 5 of Article 33 and paragraph 2 of annex III. But, what paragraph 7

of the Annex provides is that in regard to matters covered by clauses (a) and (b) of Article 33(1), a seven member Tribunal can be replaced at the option of a party by a three member special chamber, one of whom is to be nominated by each party and the third member by agreement of parties or by the President of the Tribunal. Such a provision would appear to be wholly inappropriate as it gives a party to the dispute an unilateral choice in the matter of the selection of the forum. It may be added that a provision for special chamber would not be inherently objectionable if the choice of that forum is made dependant on agreement of both the parties to the dispute and a provision to that effect is also incorporated in the main body of the Convention. The remaining provisions of Annex III contain matters of detail about the functioning of the Tribunal including procedural matters based on the provisions of Articles 33 to 39 of the Revised Text.

INTERPRETATION:

Article 1 of the Revised Text which provides the interpretation for some of the terms used in the Convention, contains two important changes in Clauses (ii) and (iii) as compared to the Single Text, both of which need to be examined. In the Single Text the term activities in the area for the purposes of the Convention was defined to mean "all activities of exploration of the area and of the exploitation of its resources as well as other associated activities in the area including scientific research". In the Revised Text the term now means "all activities of exploration for and exploitation of the resources of the area". The omission of the expression "other associated activities in the Area" found in the Single

Text is significant in the context of Articles 5, 6 and 7 and para 3 of Annex 1. It would be seen that in Annex I an activity described as 'prospecting" has been provided for apart from exploration and exploitation and if the term "activities in the area" has to be interpreted according to article 1 of the Revised Text then it may follow that in regard to prospecting the provisions of Article 7 which stipulates that the activities in the area shall be carried out for the benefit of mankind as a whole or the provisions of Article 9 Clauses (i), (ii) and (iii), the provisions of Article 12 with regard to protection of the marine environment, the provisions of Article 13 in regard to protection of human life, the provisions of Article 16(1) in regard to accommodation of activities in the area, the provisions of Article 17 in regard to responsibility and liability for damage, the provisions of Article 18 in regard to participation of developing countries, the provisions of Article 21 regarding the role of the authority, the provisions of Articles 22(1) and 23 with regard to the functions of the authority and Article 31(5) in regard to the powers of the technical commission. Apart from this it would be seen that Article 1 is not merely a definition clause, because Article 5 read in conjunction with Article 1 demarcates the scope and purport of part I of the Convention, and it is therefore not appropriate that the activities in the area for the purpose of Article 5 should be limited only to exploration and exploitation of the resources in situ. It would be noted that scientific research, transfer of technology and preservation of the environment are inter-related with the activities of exploration and exploitation of the resources and specific provisions have been made in regard thereto in Articles 10, 11 and 12 which are integral parts of part I of the Convention. It would therefore be

in appropriate to exclude such activities from the interpretation clause in regard to the activities of the area. Moreover, there is no reason for limiting the application of Articles 6, 7, 9(1) (2) and (3), 13, 14(1), 16(1), 17, 18, 21(1), 22(1) and 23 only to activities in regard to exploration and exploitation, because many of these provisions should equally apply in regard to prospecting, scientific research and other related activities. The observations made in paragraph 10 of the Chairman's introductory note, which states that the new definition given to the expression activities in the area in the Revised Text does not mean that other activities would not be covered or governed by part I of the Convention, makes it all the more necessary that the definition given in Article 1 Clause (ii) should not be restricted to activities of exploration and exploitation only. It is suggested that the expression "as well as other associated activities" which was found in the Single Text should be added at the end of Clause (ii) of this article. As a consequence of this change, the words "in relation to exploration and exploitation would have to be added after the word "activities" in some of the articles where the activities referred to are only those of exploration or exploitation such as in regard to Article 9(4), part of Article 22, Article 46, etc.

The other change which is in clause (iii) of Article 1 seeks to make a distinction between 'resources' on the one hand and 'minerals on the other. The provisions of this clause have to be read along with Article 4 and paragraph 1 of Annex I. It would be seen that the word resources was described in the single text as <u>resources in situ</u> and the term "mineral resources" was also defined.

In the Revised Text resources have been correctly defined as mineral resources in a situ but the further explanation given in this clause that when the resources are recovered they would be regarded as minerals is not very clear. It is possible that the Revised Text has made the distinction between the 'resources' and 'minerals' because of the general concept that the resources of the area is a common heritage of mankind and therefore inalienable. The Chairman in his introductory note paragraph 12 states that the resources are not subject to alienation Without prejudice to this concept, however, a distinction between resources and minerals has been introduced should it be necessary for the authority to part with the minerals at some stage. This explanation does not appear to be clear because the whole purpose of part XI of the Convention is the exploitation of the resources for the benefit of mankind as a whole which would necessarily mean extraction of the mineral, processing and sale thereof for the benefit of the international community. It is therefore not quite clear as to what is sought to be achieved by drawing a distinction between minerals and resources of the area.

P A R T -II

Part II of the Revised Single Negotiating Text which relates to the work of the Second main Committee contains ten chapters covering substantially the same topics which were the subject matter of the Single Negotiating Text. These are: the Territorial Sea and the Contiguous Zone, Straits used for International Navigation; the Exclusive Economic Zone; Continental Shelf; High Seas; Land-locked States; Archipelagos; Regime of Islands; Enclosed or Semi-Enclosed Seas and Settlement of Disputes. The provisions concerning territories under foreign occupation or colonial domination which were contained in part X of the Single Negotiating Text have now been shown under Transitional provisions in the revised text. It may be pointed out that with regard to Archipelagos the provisions of the Revised Single Negotiating Text (hereinafter referred to as the "Revised Text") are confined to Archipelagic States and unlike the Single Negotiating Text (hereinafter referred to as the "Single Text") there is no provision concerning Oceanic Archipelagos belonging to Continental States. The provisions in the Revised Text with regard to Land-locked States are confined to the question of their right of access to and from the sea and freedom of transit, presumably because the question of their participation in the share of the resources of the Economic Zone or in the International Sea-Bed Area have been dealt with under the respective heads. It may be mentioned that a heading has been given to each of the articles in the revised text which were not to be found in the Single Text.

CHAPTER I

The Territorial Sea and the Contiguous Zone

Articles 1 to 31 of the revised text deal with matters concerning the Territorial Sea and there is a single article, namely, Article 32 on the question of Contiguous Zone. The provisions

concerning the Territorial Sea have been grouped under three Sections in the same manner as it had been done in the Single Text, namely, (a) General (Section 1) consisting of a single article setting forth the juridical status of the territorial sea, of the air space over the territorial sea and of its bed and sub-soil; (b) Limits of the Territorial Sea (Section 2) consisting of Articles 2 to 15 which prescribe the maximum breadth of the territorial Sea, the method by which the Territorial Sea is to be measured in various situations and delimitation of the Territorial Sea between States opposite or adjacent to each other; and (c) Innocent passage in the Territorial Sea (Section 3) consisting of Articles 16 to 31.

The provisions of article 1 in Section 1 or the Revised Text is almost identical with the provisions of Article 1 in the Single Text.

In regard to Section 2 it may be stated that Articles 2,3,4,7,9, 10, 12 and Clause 1 of Articles 8 and 11 of the Revised Text are identical or practically identical with the corresponding articles of the Single Text and Article 14 of the Revised Text is the same as Article 13 paragraph 1 of the Single Text. In Article 5 of the Revised Text provision has been made for measuring the breadth of the territorial sea of islands situated on atolls or of islands having fringing reefs from the seaward low water line of the reef, whereas in the Single Text the Territorial Sea in such a case was to be measured from the seaward edge of the reef. It is for consideration whether the Revised Text is appropriate in the context of geological formation of the reefs. Article 6 of the Revised Text contains provisions which are identical with the provisions of clauses 1,3,4, 5 and 6 of Article 6 of the Single Text. The provisions of Clause 2 of Article 6 of the Single Text are now incorporated in Article 13 of the Revised Text, whilst Clause 7 of Article 6 as also the provisions of the second

part of Articles 8 and 11 of the Single Text now find place in Article 15 of the Revised Text. It would therefore be clear that there is practically no change in the Revised Text in regard to the limits of the Territorial Sea and its measurement in various situations as compared to the provisions of the Single Text with the exception perhaps in Article 5.

In Section 3 of this chapter which concerns the right of innocent passage through the Territorial Sea, certain changes have been made in the text of some of the articles in the Revised Text as compared to the corresponding provisions of the Single Text, but those changes are of a minor character or of a drafting nature and do not on the whole make much difference to the substance, except in a few cases which are indicated here. In Article 18(2) of the Revised Text (which corresponds to Article 16(2) of the Single Text) any fishing activity in the Territorial Sea by a foreign ship in the course of its passage has been added as one of the activities considered prejudicial to the peace, order or security of the Coastal State. Paragraphs 3 and 4 of Article 16 of the Single Text which contemplated that some of the activities though regarded as prejudicial shall not be so if carried out with prior authorization of the Coastal State or rendered necessary by force majeure conditions. These provisions do not find any place in the Revised Text. Similarly with regard to Article 19 of the Revised Text (which corresponds to Article 17 of the Single Text), the possibility of sub-marines and under water vehicles not being required to navigate on the surface if so authorized by the Coastal State is also excluded. Another provision of the Single Text which does not find any place in the Revised Text is Article 23 of the Single Text which contemplated payment of compensation for damages caused to the Coastal State, as also payment of damages to foreign ships on account

of wrongful acts of the Coastal State. One more change of a substantial character which may be pointed out is that the provision concerning levy of charges on foreign ships (Article 24 in the Single Text and Article 25 in the Revised Text) has now been included in sub-section A, which means that charges may now be levied on all ships and not merely on merchant ships and government ships used for commercial purposes. Another deletion in the Revised Text is of the provision of Article 19(3) of the Single Text which had provided that a Coastal State may from time to time, after giving due publicity, modify the traffic separation schemes or substitute other sealanes for any sealanes previously designated by it.

The provisions in which practically no changes have been made are those contained in Articles 24, 26, 27 and 28 of the Revised Text which correspond to Articles 22,25, 26 and 29(1) of the Single Text.

The provisions which contain minor changes or changes of a drafting nature not affecting the substance of the matter are to be found in Articles 16, 17, 18 (with the exceptions pointed out above) 20, 21, 22, 23, 29, 30 and 31 corresponding respectively to the provisions of Articles 14, 15, 16, 18, 19, 20, 21, 30, 32 and 31 of the Single Text.

The provisions of Article 27 of the Single Text have not been included in the Revised Text presumably because it was considered unnecessary since the headings given to sub-sections (A) and (B) of Section 3 make it clear that the rules provided for therein apply to Government ships operated for commercial purposes. The Provisions of Article 28(1) of the Single Text also do not find a place in the Revised Text for the same reason, because a reference to the heading of sub section (A) and inclusion of Article 25 in that sub-section in the Revised Text makes the position clear. Article 29(2)

of the Single Text was also found unnecessary for the reasons stated above. The provisions of Article 28(2) of the Single Text has not been separately set out in the Revised Text but the principles behind that provision are adequately covered by Article 31 of the Revised Text.

Section 4 of this chapter consisting of a single article deals with the contiguous zone. Here the provisions of Article 32 are identical with the provision in the Single Text, Article 33.

In view of the fact that there are no substantial changes of a basic character in the various provisions of the Revised Text in regard to the Territorial Sea and the Contiguous Zone, as compared to the provisions of the Single Text, it is considered unnecessary to prepare detailed comments on the various articles. Attention is invited to the Secretariat's paper containing notes and comments on the Single Negotiating Text on subjects allocated to Committee II, pages 1 to 19, which has a detailed analysis of the corresponding articles in the Single Negotiating Text and a comparative study of the said provisions vis-a-vis the Geneva Convention of 1958 and the various proposals put forward before the Sea-Bed Committee and at Caracas.

CHAPTER II

Straits used for International Navigation

Chapter II of this part consisting of Articles 33 to 43 relate to Straits used for International Navigation. The provisions correspond to Articles 34 to 44 of the Single Negotiating Text. The changes made in the Revised Text are mainly of a drafting nature, for example, the expression "Strait States" used in the Single Text is substituted in each of the articles by the expression "States bordering the Straits" which was the definition given in the Single Text for the expression "Strait State".

Article 33 of the Revised Text is practically the same as Article 34 of the Single Text, except to the extent that the provisions of clause 3 of Article 34 which contained the definition of a "Strait State" has been omitted, due to the fact that in all the articles of the Revised Text, the expression "Strait State" has been substituted by the expression "States bordering the Straits". Paragraph (a) of Article 34 is a redraft of Article 35 paragraph (a) of the Single Text with no substantial change. Paragraphs (b) and (c) of Article 34 of the Revised Text are practically the same as Article 35 paras (b) and (c) of the Single Text. Article 35 of the Revised Text, which is a redraft of Article 36 of the Single Text, has some important additional words which clarify that a route of similar convenience used in this article means a route of similar convenience with respect to navigational and hydrographical characteristics. The same clarification is also to be found in Article 37(1) of the Revised Text which corresponds to Article 38(1) of the Single Text. Paragraph 2 of that Article is virtually a redraft of paragraphs 2 and 3 of Article 38 of the Single Text with no substantial changes, but the text of the Revised draft is much more clear. Articles 38, 39, 40, 41 and 42 of the Revised Text are practically the same as the provisions of Articles 39 to 43 of the Single Text with some drafting changes in paragraph 5 of Article 40 and in Article 41, which correspond to Article 41(5) and Article 42 of the Single Text respectively. In Article 43, which corresponds to Article 44 of the Single Text however, there is some change in that the provision of paragraph 1(a) of Article 44 of the Single Text has been omitted. In that paragraph it was provided in the Single Text that the regime of innocent passage shall apply in Straits used for International navigation between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone, other than those Straits in which the regime of

transit passage applied in accordance with Section 2. The deletion of this provision seems to be appropriate because it was not at all clear what was intended to be covered by that provision of the Single Text.

It would thus be seen that there is no substantial difference between the provisions of the Single Negotiating Text and those of the Revised Text in regard to passage through Straits used for International Navigation. Attention is therefore invited to the notes and comments prepared by this Secretariat on the Single Negotiating Text, pages 20 to 34 wherein the provisions of the Single Text had been analysed with reference to the various proposals before the Sea-Bed Committee and at Caracas and particularly the difference between the concept of innocent passage as spelt out in the Single Text in relation to the Territorial Sea and the concept of transit passage proposed in regard to transit through straits used for international navigation.

CHAPTER III

The Exclusive Economic Zone

Chapter III of this part in the Revised Text consisting of Articles 44 to 63 contains provisions on the Exclusive Economic Zone corresponding generally to Articles 45 to 61 of the Single Text. Certain drafting changes have been introduced and some of the articles have been rearranged, but substantial changes are very few.

Article 44 paragraphs 1 and 2 of the Revised Text are substantially the same as paragraphs 1 and 2 of Article 45 of the Single Text, but, paragraph 3 of this Article in the Revised Text has been made more explicit in that it clearly sets out that the rights in the Economic Zone with respect to the bed and subsoil shall be exercised in accordance with

Chapter IV of the Convention, namely, the Continental Shelf. The Provisions of Articles 45,46(3), 47 and 48 of the Revised Text are identical with the provisions of Articles 46, 47(4), 47(3) and 48 of the Single Text. Article 46(1) of the Revised Text is virtually a redraft of Article 47(1) of the Single Text, but, there is an important change in the provisions of Article 46(2) of the Revised Text which corresponds to Article 47(2) of the Single Text. It would be seen that in the Single Text the provisions of the Convention in regard to the High Seas which recognize the right of all States to be entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf was not made applicable in the Economic Zone. This position has now been changed in the Revised Text by making this provision applicable also in the Economic Zone.

In regard to research activities in the Economic Zone Article 49 of the Revised Text links up the question with the provisions of the Chapter on marine scientific research and does not attempt any detailed provision which was done in Article 49 of the Single Text.

In regard to the provisions for conservation and utilization of the living resources of the zone, Articles 50 to 57 of the Revised Text substantially reproduce the provisions of Articles 50 to 56 of the Single Text with some alterations, drafting changes and rearrangements of the paragraphs but there does not seem to be any substantial difference between the provisions of the Revised Text and those of the Single Text.

In regard to the right of landlocked States, paragraphs 1 and 2 of Article 58 of the Revised Text are practically identical with the provisions of Article 57 of the Single Text. Paragraph 3 of Article 58 of the Revised Text however contains an

additional provision which is not found in the Single Text. This provides that paragraph 1 of this Article is without prejudice to arrangements agreed upon in regions where the Coastal States may grant to landlocked States of the same region, equal or preferential rights for the exploitation of the living resources in the Exclusive Economic Zones. This provision seems to contain a compromise formula to accommodate the interests of the landlocked States and should be acceptable since the matter is left to be determined by means of arrangements to be entered into between landlocked and coastal States of the region concerned. In this connection attention is invited to paragraph 11 of the Chairman's introductory note wherein it is stated as follows:

"11. On the question of the rights of landlocked States and certain developing coastal States in the exploitation of the resources of the exclusive economic zone, I made no major changes. Despite the fact that a great amount of effort was devoted in the special interest group and in other informal groups dealing with the issue, I was offered no clear guidance on possible changes. No single proposal commanded significant support. I consider that any major change in the relevant provisions could jeopardize any further negotiations which might take place."

There is also a new provision in Article 60 of the Revised Text which corresponds to Article 59 of the Single Text in regard to restriction on transfer of rights by landlocked States and other geographically disadvantaged States. It is now clarified in this Article that the restriction will not preclude States from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of their rights within the economic zone. This new addition would appear to be appropriate and it may be pointed out that a provision of this nature was in fact suggested in the AALCC Secretariat's paper before the Tokyo Session. The provision concerning the rights of geographically disadvantaged States in a region contained in Article 59 of the Revised Text are identical with the provisions of the Single Text

on the same subject contained in Article 58 of the Single Text.

The provisions of Article 61 of the Revised Text on enforcement of laws and regulations of the Coastal State are identical with the provisions of the Single Text contained in Article 60 thereof.

In regard to delimitation the provisions of Article 62 paragraphs 1, 2, 4 and 5 reproduce the provisions of Article 61 paragraphs 1, 2, 4 and 6 of the Single Text. There is however some important change in paragraph 3 of Article 62 of the Revised Text as compared to paragraph 3 of Article 61 of the Single Text. In the Revised Text it has been provided that pending agreement or settlement, the States concerned shall make provisional arrangements taking into account the provisions of paragraph 1 of Article 62, whilst in the Single Text it was stated that pending agreement, no State is entitled to extend its Exclusive Economic Zone beyond the median line or the equi-distance line. In this connection attention is invited to paragraph 12 of the Chairman's introductory note which states as follows:-

"12. On the issue of delimitation of the exclusive economic zone and the continental shelf between adjacent or opposite States an extensive exchange of views took place. A close study of the discussion, bearing in mind the rule of silence, revealed broad support for the thrust of the article in the single negotiating text. However, paragraph 3 of former articles 61 and 70 posed a problem. Since the Conference may not adopt a compulsory jurisdictional procedure for the settlement of delimitation disputes, I felt that the reference to the median or equidistant line as an interim solution might not have the intended effect of encouraging agreements. In fact such reference might defeat the main purport of the article as set out in paragraph 1. Nonetheless, the need for an interim solution was evident. The solution was, in my opinion, to propose wording in paragraph 3 which linked it more closely to the principles in paragraph 1".

Article 63 of the Revised Text dealing with charts and geographical co-ordinates contains detailed provisions on this issue which appear to be unobjectionable. The principles contained here are an elaboration of the provisions of paragraph 5 of Article 61 of the Single Negotiating Text.

It would be seen from what is stated above that there are no major or substantial changes in the provisions of the Revised Text. It has therefore been found unnecessary to make detailed comments on those provisions and attention is invited to the Secretariat's study on the Single Negotiating Text at pages 35 to 78.

CHAPTER IV
Continental Shelf

Chapter IV of this part in the Revised Text consisting of Articles 64 to 74 is on Continental Shelf which correspond to Articles 62 to 72 of the Single Text. There are very few changes in the Revised Text as compared to the provisions of the Single Text and attention is therefore invited to pages 79 to 94 of the Secretariat's study on the Single Text for detailed comments on the various provisions. The few changes made in the Revised Text are indicated herein below.

Article 64 of the Revised Text is identical with the provisions of Article 62 of the Single Text. Attention however is invited to paragraph 13 of the Chairman's introductory note wherein it is stated as follows:

"13. On the definition of the continental shelf I was sympathetic to proposals that the outer limit of the continental margin need be precisely defined, particularly since the definition contained in the single negotiating text commanded significant support. However, since the proposals on such a precise limit were of a very technical nature and were in fact presented to the Committee in detail for the first time, I did not consider it

appropriate to include such a definition at this stage. At the next session, a group of experts could perhaps be convened to give more exposure to this question".

Articles 65 to 69 of the Revised Text are virtually the same as Articles 63 to 67 of the Single Text. There are however two important changes in Article 70 of the Revised Text which correspond to Article 69 of the Single Text. This provision deals with the question of payment of contributions by the Coastal State with respect to the exploitation of the Continental Shelf beyond 200 miles. In paragraph 2 of Article 70 of the Revised Text it is contemplated that payment of contributions shall be made annually with respect to all production at a site, after the first five years of production. It however contemplates graduated increase in the rate of contribution between the sixth and tenth year and the future contributions to be fixed at the same rate as the contribution for the tenth year. Paragraph 3 of this Article gives discretion to the International Authority to determine whether developing countries should be obliged to make such payment of contributions and if so, at what rate. The provision in the Revised Text on this question seems to be in the interest of developing countries and ought to be acceptable.

Article 71 of the Revised Text which corresponds to Article 70 of the Single Text on the question of delimitation of the continental shelf between adjacent and opposite States contains some amendments in paragraph 3. The amended provision now provides that pending agreement or settlement, the States concerned shall make provisional arrangements taking into account the provisions of paragraph 1 of the Article. This is on the same pattern as paragraph 3 of Article 62 of the Revised Text which deals with the question of delimitation of the Exclusive Economic Zone between adjacent or opposite States.

Article 72 of the Revised Text is a new provision based on the provisions of Article 70(5) of the Single Text concerning charts and geographical co-ordinates of the Continental Shelf. This is similar to the provisions of Article 63 which deals with charts and geographical co-ordinates of the Economic Zone. Article 73 of the Revised Text which corresponds to Article 71 of the Single Text concerning research activities in the Continental Shelf links up the matter with the chapter on marine scientific research instead of laying down the guidelines in this chapter itself. The provisions of this article are on similar lines as Article 49 which deals with the question of research in the Economic Zone. The provisions of Article 74 of the Revised Text on tunneling are identical with the provisions of Article 72 of the Single Text.

CHAPTER V

High Seas

Chapter V of this part of the Revised Text consisting of Articles 75 to 108 is on the high seas. These provisions generally correspond to Articles 73 to 107 of the Single Text with minor changes and attention is therefore invited to pages 95 to 106 of the Secretariat's study on the Single Text for detailed commentary on the various provisions.

It may however be pointed out that although the definition of the high seas given in Article 75 of the Revised Text is identical with the provisions of Article 73 of the Single Text, there was a great deal of controversy at the New York Session on the question whether or not the Exclusive Economic Zone should be included in the definition of the high seas. In this connection attention is invited to paragraphs 14 to 19 of the Chairman's introductory note which are set out below:

"14. The matter on which the Committee was perhaps the most divided was whether or not the exclusive economic zone should be included in the definition of the high seas. I felt initially that I should at least point the way to a compromise solution, giving tangible recognition in some manner to my opinion that an accommodation could be found.

15. However, upon more closely analyzing the discussion, I decided that to change the text now might be counterproductive, in the sense that it could upset the balance implicit in the single negotiating text.

16. It was perhaps unfortunate that the issue was addressed in terms of the definition of the high seas in article 75. There could be little debate as to which of the provisions in the chapter on the high seas apply in the exclusive economic zone, whether included in the definition of high seas or not.

17. Nor is there any doubt that the exclusive economic zone is neither the high seas nor the territorial sea. It is a zone sui generis.

18. As has often been pointed out, the matter should be addressed in terms of the "residual rights". In simple terms, the rights as to resources belong to the coastal State and, in so far as such rights are not infringed, all other States enjoy the freedoms of navigation and communication. In fact, this is specified in general terms in article 46, when read in conjunction with articles 44 and 47. Many had thought that these provisions dealt adequately with the matter. My original intention to point the way to a compromise solution would have related closely to these provisions. And, I would encourage a reorientation of the discussion around these articles.

19. As a result, while the article on the definition of the high seas has not been changed, I hope it is clear from these comments that I have given this controversial issue careful consideration".

The opening portion of Article 76 and the provisions of Article 77 of the Revised Text contain a redraft of the provisions of Article 74 and the opening part of Article 75 of the Single Text. The second paragraph of Article 76 which corresponds to Article 75(2) of the Single Text contains certain additional words which clarify that the freedom of the high seas as enumerated in paragraph 1 of Article 76 of the Revised Text would be exercised with due consideration for the rights under the Convention with respect to activities in the international area.

The remaining articles in this chapter, namely, Articles 78 to 108 are almost identical with the provisions of Articles 76 to 107 of the Single Text with a few minor drafting changes.

CHAPTER VI
Land-locked States

Chapter VI of the Revised Text consisting of Articles 109 to 117 deals with the question of landlocked States. These provisions with the exception of Article 117 are practically identical with the provisions of Articles 108 to 115 of the Single Text. It would be seen that the provisions of the Revised Text relate only to the right of access of landlocked States to and from the sea and freedom of transit and consequently there is no provision in this chapter with regard to participation of landlocked States in the exploitation of the resources of the Exclusive Economic Zones of adjoining Coastal States or in regard to the right of such States in the resources of the international sea-bed area which have been dealt with in the appropriate parts of the Revised Text.

The provisions of Article 117 which has no corresponding provision in the Single Text is a useful addition as it clarifies that the Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in the Convention and which are agreed between States parties to the Convention or may be agreed upon between them in the future. Although this was always the accepted position, Article 117 helps to clarify the same.

Since the provisions of the Revised Text and the Single Text on the question of right of access and transit are practically identical, attention is invited to pages 107 to 122 of the Secretariat's Study on the Single Negotiating Text for detailed comments on the various provisions.

CHAPTER VII
Archipelagic States

Chapter VII of this part of the Revised Text consisting of Articles 118 to 127 deals with the question of Archipelagic States. These provisions correspond to Articles 117 to 130 of the Single Text. It would be seen that unlike the Single Text, no provision has been made in the Revised Text in regard to Oceanic Archipelagos belonging to Continental States.

The definition of an Archipelagic State and an Archipelago given in Article 118 are identical with those given in Article 117(2) of the Single Text. In Article 119 of the Revised Text which corresponds to Article 118 of the Single Text, provision has been made in paragraph 2 about the specific percentage of the straight baselines that could exceed the prescribed length of eighty nautical miles. The provisions of paragraph 6 regarding indication of such baselines on charts has also been made more specific by providing that the charts should be of a scale or scales adequate for determining them. The remaining provisions of this article are however the same as in the Single Text.

The provisions of Articles 120, 121, 122, 124 and 127 are practically identical with the provisions of Articles 119, 120, 121, 123 and 127 of the Single Text.

Paragraph 1 of Article 123 which corresponds to Article 122 of the Single Text contains some additional words and drafting changes which are important. This article which deals with existing agreements, traditional fishing rights, etc., now provides in the Revised Text that the terms and conditions of the exercise of such rights and activities including the nature, the extent and the areas to which they apply shall at the request

of any of the States concerned be regulated by bilateral agreements between them. Paragraph 2 of this article which is a new provision and not found in the Single Text enjoins upon archipelagic States to respect existing submarine cables laid by other States and passing through their waters without making a landfall. It also obliges the Archipelagic States to permit the maintenance and replacement of such cables upon due notice. Article 125 of the Revised Text which corresponds to Article 124 of the Single Text on the question of right of archipelagic sealanes passage has also certain important changes, as compared to the provisions of the Single Text. For example, in paragraph 1 of this Article it is provided that an Archipelagic State may designate sealanes and air routes through or over its archipelagic waters and the adjacent territorial sea. It is for consideration whether the concept of archipelagic sealanes passage, even if accepted, can be extended to the territorial sea, although from a practical point of view sealanes designated for passage through archipelagic waters may sometimes have to traverse through the territorial sea. Paragraphs 2, 3 and 4 of this article which correspond to paragraphs 2, 3 and 4 of Article 124 of the Single Text had been redrafted but without any significant changes. The remaining provisions of this paragraph are practically identical with the provisions of the single text.

Article 126 of the Revised Text replaces the provisions of Articles 125, 126 and 128 of the Single Text. What has been done in the Revised Text is that instead of spelling out the duties of ships and aircrafts during their passage through archipelagic sealanes, duties of archipelagic States and the laws and regulations of the Archipelagic State relating to Archipelagic sealanes passage, the provisions of the Convention

on the same matters in regard to transit passage has been made applicable by incorporation. This is presumably so because transit passage through straits has the same scope and content as archipelagic sealanes passage in archipelagic waters.

In the Revised Text the provision concerning the responsibility of the flag State forloss or damage caused to an Archipelagic State or other States in the vicinity by ships or aircrafts entitled to sovereign immunity (Article 129 of the Single Text) has been omitted.

Since there are no major differences between the provisions of the Revised Text and those of the Single Text, the Secretariat's Study on the Single Text (pages 130 to 148) may be referred to for detailed comments and analysis of the various provisions of this chapter.

CHAPTER VIII
Regime of Islands

This chapter consisting of a single article, that is, Article 128 is on the Regime of Islands. The provisions of this article are identical with those of Article 132 of the Single Text. Attention is invited to pages 149 to 153 of the Secretariat's study on the Single Text for commentary on this article.

CHAPTER IX
Enclosed or Semi-Enclosed Seas

This Chapter consisting of Articles 129 and 130 is on enclosed or semi-enclosed seas. These correspond to Articles 133 to 135 of the Single Text. The definition of the term enclosed or semi-enclosed seas given in Article 129 of the Revised Text is practically the same as Article 133 of the Single Text. In Article 130 of the Revised

Text the obligation of States bordering enclosed or semi-enclosed seas to co-operate with each other in the exercise of their rights and duties under the present Convention has been made less mandatory by the use of the expression 'should' in place of 'shall' which found place in the Single Text. The other change is the omission of the word 'endeavour' in regard to co-ordination of the activities through appropriate regional organizations. The provisions of Article 135 of the Single Text which had stated that the provisions of this chapter shall not affect the rights and duties of Coastal or other States under other provisions of the Convention has not been retained in the Revised Text. This is an important change. Attention is invited to pages 154 to 161 of the Secretariat study on the Single Negotiating Text for analysis and comments on the provisions of this chapter.

CHAPTER X
Settlement of disputes

This chapter consisting of Article 131 corresponding to Article 137 of the Single Text is on settlement of disputes. It simply provides that the disputes shall be resolved in accordance with the general provisions concerning settlement of disputes in the Convention.

TRANSITIONAL PROVISIONS

The provisions of Article 136 found in the Single Negotiating Text concerning territories under foreign occupation or colonial domination has not been incorporated in the main body of the Revised Single Negotiating Text but has been set out at the end of part 2 under transitional provisions. The reasons for so doing would be found in paragraph 20 of the Chairman's introductory note which states as follows:

"20. The article dealing with territories under foreign occupation or colonial domination resulted in a long debate in the Committee. After reflecting on the debate I did not feel that I should make either major additions to or deletions from the existing text, except to redraft paragraph 2 in less absolute terms. On the other hand, it must be recognized that the article raises issues which go beyond the scope of the law of the Sea. By placing it separately as a transitional provision, I adopted a solution which would not in any way imply that the matters dealt with in the provisions are permanent and immutable in nature".

Paragraphs 1 and 4 of the transitional provisions are the same as paragraphs 1 and 4 of Article 136 of the Single Text, whilst paragraph 3 is a redraft of the provisions of paragraph 3 of Article 136 without any difference in substance. There are however certain major changes in the redrafting of paragraph 2 by limiting the operation of this paragraph to cases of disputes over the sovereignty of a territory in respect of which the United Nations has recommended specific means of solution.

PART THREE

Part III of the Revised Single Negotiating Text covers three topics, namely, Protection and Preservation of the Marine Environment (Articles 1 to 47), Marine Scientific Research (Articles 48 to 77) and Development and Transfer of Marine Technology (Articles 78 to 89). In the Single Negotiating Text drawn up in Geneva each of these subjects were dealt with in a separate part and the articles separately numbered.

Protection and Preservation of the Marine Environment

In the Secretariat's Study on the Single Negotiating Text (hereinafter referred to as the Single Text) on this topic the main issues and the topics for discussion were indicated and attention is invited to pages 6 and 7 of that Study in this connection. Reference to the various proposals put forward before the Sea-Bed Committee and also at the Caracas And Geneva Sessions of the Conference on the Law of the Sea would be found at pages 2, 3 and 4 of that Study. The changes made in the Revised Single Negotiating Text (hereinafter referred to as the Revised Text) are not many, except in regard to the question of enforcement.

The definition of the term "pollution of the marine environment" given in Article 1 of the Revised Text is substantially the same as in the Single Text and the main sources of pollution as given in paragraph 3 of Article 4 are identical with the provisions of the Single Text. There is also no change in the provisions of Article 2 which imposes an obligation on States to protect and preserve the marine environment. There is however a significant change in the provisions of Article 3 where the words "take into account their economic needs and their

programmes for economic development" have been omitted in the Revised Text. The omission of these words in the context of the substantive provisions of Article 4 paragraphs 1 and 2 and Article 5 assumes importance, particularly for the developing countries. It has to be appreciated that any industrial activity and particularly any extension thereof are bound to result in discharge of pollutants which cannot be completely avoided. Developing countries with programmes of industrialization would find it extremely difficult to expand their activities if an obligation is cast on the States in absolute terms to prevent pollution of the marine environment. It was for this reason that Article 3 of the Single Text had categorically provided for account being taken of the economic needs of nations and their programmes for economic development in formulating their environmental policies. The omission of these words would therefore not be in the interest of developing States. Article 6 of the Revised Text is a new provision which enjoins upon States to reduce and control the use of technologies which may cause significant or harmful changes to marine environment. There should be no objection to this provision.

Articles 7 to 11 of the Revised Text, which contain provisions on global and regional co-operation, are substantially the same as Articles 6 to 10 of the Single Text. The provisions of Articles 7, 10 and 11 which contemplate co-operation between States directly or through international organizations in the matter of collection of scientific data and formulation of standards are essential in any system of pollution control but what needs to be considered is whether it is sufficient to leave this matter concerning formulation of standards merely in the form of a general obligation on the States to co-operate with each other or whether more positive provisions should be made in the Convention under

which organizations like IMCO, FAO and UNEP be given the task of collecting data and formulating standards or recommended practices in consultation with the States taking into account their national and regional requirements. Once such standards are prescribed then the task of law making would be comparatively easy and could be appropriately left to individual States. The provisions concerning technical assistance, monitoring and environmental assessment contained in Articles 12 to 16 of the Revised Text are practically the same as in the Single Text. The provisions in the Revised Text on international rules and national legislations contained in Articles 17 to 22 are practically on the same lines as Articles 16 to 21 of the Single Text, but some changes have been made in Article 19 as also in paragraphs 4 and 5 of Article 21. Article 19 provides that States shall establish rules, standards and recommended practices as also procedures to prevent, reduce and control pollution of the marine environment from activities concerning exploration and exploitation of the international sea-bed area. It is not very clear whether this provision is intended to apply to the activities carried out by the State concerned and its nationals, because no individual State would be competent to exercise jurisdiction in regard to such matters in the international sea-bed area. The changes made in Article 21 paragraphs 4 and 5 may not be open to objection.

Articles 23 to 40 of the Revised Text deal with the question of enforcement and jurisdiction. The provisions of the Single Text on this topic are found in Articles 22 to 40. Some of the provisions such as those which are found in paragraphs 2, 3 and 5 of Article 27 or the provisions of Article 29 were not found in the

Single Text, but the new provisions seem to be quite appropriate. Certain new safeguards have been provided for in proceedings under this chapter in Article 33 and Article 38 provides for institution of criminal proceedings for violation of applicable laws and regulations or international rules and standards. Notwithstanding the few changes, the pattern of enforcement remains by and large as in the Single Text and attention is invited to the Secretariat's Study on the provisions of that Text. Article 43 is a new provision which deals with the question of establishment and enforcement of non-discriminatory laws and regulations in regard to ice covered areas. This provision also does not appear to be open to objection. The provisions of the Revised Text on responsibility and liability, sovereign immunity, position under special conventions and agreements, and settlement of disputes contained in Articles 44, 45, 46 and 47 respectively are also on the same lines as those in the Single Negotiating Text.

Marine Scientific Research

Articles 48 to 77 of the Revised Text deal with the question of Marine Scientific Research. The provisions in the Single Text on this topic were contained in Articles 1 to 37 of part II of the Text prepared by the Chairman of Main Committee III at Geneva. The proposals before the Sea-Bed Committee as also at Caracas and Geneva Sessions of the Conference on the Law of the Sea on this topic have been referred to in the Secretariat's Study on the provisions of the Single Text. A comparison of the provisions of the Revised Text and the Single Text would show that the Revised Text does not have provisions corresponding to Articles 28, 29, 34, 35 and 36 of the Single Text which drew a distinction between fundamental

research on the one hand and research relating to the resources on the other in the Economic Zone and the Continental Shelf. It had been pointed out in the Secretariat's Study on the Single Text that there can be no valid basis for drawing a distinction between fundamental research and research relating to the resources and it is a matter of satisfaction that in the Revised Text this distinction has been removed. The provisions of Articles 48, 49, 50, 51(a), 51(c), 51(d), 52, 53, 54, 55, 56, 59(b), 59(c), 63, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75(1) of the Revised Text are practically identical with the provisions of Articles 1, 2, 3, 4(a), 4(b), 4(c), 7, 8, 9, 10, 11, 16(e), 16(f), 17, 23, 24, 25(1), 26, 27, 30, 31, 32, 33 and 34 (first part) of the Single Text. The provisions of Article 51(b) of the Revised Text are based on Article 6 of the Single Text and the principle behind the provisions of Article 75(2) of the Revised Text is the same as contained in Article 34 (second part) of the Single Text. Attention is therefore invited to the Secretariat's Study on the Single Text for comments on these provisions. The few changes which occur in Articles 57, 58, 59(a), 59(c) and 59(g), Articles 60, 64, 76 and 77 may be examined. In Article 57 of the Revised Text it is now provided that Coastal States have the sovereign right to conduct and regulate Marine Scientific Research in their territorial sea. The word "sovereign" here has been substituted in place of the word "exclusive" which was found in the Single Text. This change appears to be appropriate. In Article 58 it is provided that States and international organizations which intend to undertake scientific research in the Economic Zone or on the Continental Shelf of a Coastal State shall give advance notice of not less than four months of the exact starting date

of the research project. This also appears to be appropriate. In paragraph (b) of this article the party which intends to conduct the research has to provide the Coastal State with full description of the method and means to be used in the scientific research including the name, tonnage, type and class of vessels and the description of scientific equipment. This also appears to be appropriate. On the whole the provisions of Article 58 seem to be more satisfactory than the corresponding provision in the Single Text. Clause (a) of Article 59 contains certain changes as compared to the corresponding provision in the Single Text (Article 16). This clause now provides that the Coastal State may, if it so desires, be allowed to participate or to be represented in the research project undertaken by another State or international organization on board research vessels and other craft or installation only when practicable without payment of any remuneration to the scientists of the Coastal State and without obligation on the part of the Coastal State to contribute towards the cost of the research project. The point to note here is participation on board vessels, craft or installation would be allowed only when practicable. There is also a small change in clause (c) of this article. Under the provisions of the Single Text the Coastal State is to be provided by the Researching State with certain data or samples. But now, under the Revised Text the Coastal State is merely to be given access to the data or the sample. The provisions of Article 59(g) which is now do not appear to be open to objection. The provisions of Articles 60 and 64 however require consideration. Paragraph 2 of Article 60 provides that the Coastal State shall not withhold its consent to the conduct of scientific research unless

that project bears substantially upon the exploration and exploitation of the living or non-living resources or involves drilling or use of explosives or unduly interferes with economic activities performed by the Coastal State or involves the construction, operation or use of artificial islands, installations and structures. This is really bringing in the concept of a fundamental research without using that expression. It is doubtful whether an obligation of the type imposed by Article 60 is appropriate. Article 64 provides that a State may commence scientific research after giving the four months notice, unless the Coastal State objects within two months of the receipt of the communication. It is felt that the period of two months might be too short for the Coastal State to take its decision. Articles 76 and 77 are on the question of settlement of disputes. These provide for a special conciliation procedure which is somewhat different from the procedure indicated in Annex 1A of the Single Text on settlement of disputes.

Development and Transfer of Technology

Articles 78 to 89 of the Revised Text deal with this topic. These provisions, except in a few cases, are practically the same as Articles 1 to 11 of part III of the Single Negotiating Text. There are only two changes which may be noticed; one is in Article 80(c) of the Revised Text which provides that States directly or through competent international organizations shall promote the development of the necessary technological infra-structure to facilitate the transfer of Marine Scientific Technology. In the corresponding provision of the Single Text the words "in consonance with the economy and

needs of the recipient country" were found at the end of the sentence. The reason for deletion of these words in the Revised Text does not seem to be clear and it is suggested that those words should be retained. The provisions of Article 87 paragraph 2, which provides that all States of the region shall duly co-operate with the regional centres in order to ensure the more effective achievement of their objectives and Article 89, which enjoins the competent international organizations to effectively discharge the functions and responsibilities assigned to them, are additional provisions which were not to be found in the Single Text. There should however be no objection to their acceptance. Since the provisions of the Revised Text on this topic are substantially the same as those in the Single Text, attention is invited to the Secretariat's Study on the Single Text for comments on the various provisions.

P A R T IV

SETTLEMENT OF DISPUTES

The single negotiating texts which were prepared by the Chairmen of the three main Committees during the Geneva Session did not contain any comprehensive provisions on the settlement of disputes, except in regard to Committee I matters. During the New York Session the Conference authorized the President to prepare a new Single Negotiating Text on the subject of settlement of disputes which would have the same status as the other Single Negotiating Texts.

The Single Text drawn up by the President of the Conference has two sections containing substantive provisions regarding obligation of parties to settle their disputes according to procedures indicated in the Single Text and the choice in regard to the different settlement procedures outlines therein. The Single Text contains two sets of annexes; the first set gives the detailed procedure to be followed in conciliation proceedings, in arbitration and before the Law of the Sea tribunal; whilst the second set gives the special procedures applicable in regard to settlement of disputes through expert bodies in regard to fisheries, pollution, scientific research and navigation.

The scheme envisaged in the Single Text is the possibility of having a separate set of dispute settlement procedures in regard to the subject matter of part I of the Convention, namely, activities in the international sea-bed area although this question can not be said to be completely settled. Part I of the Revised Text it has been seen, contains provisions concerning settlement of disputes in regard to the interpretation of part I of the Convention through a machinery provided for therein. It also envisages establishment of a Tribunal as an

organ of the international sea-bed authority with competence to render advisory opinions, to review the decisions of the various organs of the authority on a complaint filed before it, to settle disputes between States parties in regard to interpretation of part I of the Convention as also to give its decision on disputes arising out of contracts in regard to the activities of the area. The Single Text drawn up by the President contains a note that the precise relationship of the provisions of the part on the settlement of disputes with other parts of the Convention, in particular the provisions on the settlement of disputes in part I of the Revised Text was yet to be determined. Article 8 of the President's Single Text accordingly provides that in cases where part I of the Convention provides for an exclusive procedure for the settlement of disputes relating solely to the interpretation or application of the provisions of that part, the dispute settlement procedure envisaged in the President's Single Text would not be applicable. Incidentally it may be pointed out here that the Single Text uses the expression "Chapter 1" for the expression "part 1" which terminology has been adopted in the Revised Single Negotiating Text.

On the question ofa seperate dispute settlement system in regard to part I of the Convention it may be stated that such separate procedure can be justified on the ground that a comprehensive international machinery is contemplated for the international sea-bed area and an organ for settlement of disputes is a necessary part of an international machinery of the type envisaged in part I of the Convention, which would be competent to give advisory opinion to other organs of the authority regarding the proper interpretation of those parts of the Convention with which the

international machinery and its various organs are concerned. Secondly, the work relating to prospecting, exploration and exploitation of the area under. contractual relationship between the authority and others including individuals may give rise to disputes of a private law nature which have to be settled under different procedures. However, the question of interpretation of the Convention whether related to one part of the Convention or another involves the same type of work with the same parties before a Tribunal, namely, States parties to the Convention and there can be little justification for entrusting the work of interpretation of part I of the Convention to a different settlement machinery. Furthermore any interpretation given to a provision in part I of the Convention may have effect in interpreting another part of the Convention and the possibility of a conflict of decisions cannot be altogether excluded if different settlement procedures were to be applicable in regard to the interpretation of different parts of the Convention. It may be pointed out as an example that the question of scientific research, transfer of technology and protection of marine environment from pollution are matters which arise in regard to the sea-bed area, in the economic zone and on the high seas, provisions with respect to which would be found in three different parts of the Convention. It is desirable that with regard to these matters the same dispute settlement procedures should apply. The President in drawing up his single text has not been unmindful about the overlapping of the jurisdiction under the dispute settlement machinery in part I and the settlement machinery which is envisaged in his Single Text. He has accordingly provided in paragraph 2 of Article 8 that where the Tribunal having jurisdiction in accordance with the provisions of part I in dealing with a dispute relating to the interpretation or application of the provisions of that part determines that such

dispute involves also questions relating to the interpretation or application of other parts of the Convention, it shall require the parties to the dispute first to submit such questions for a finding to the appropriate forum envisaged in the Single Text and suspend proceedings pending conclusion of such determination by the machinery envisaged in the Single Text on settlement of disputes. This would mean that when an Arbitral Commission or the Sea-bed Tribunal is seased of a dispute it must postpone its hearing if it finds that the subject matter of the dispute also involves interpretation of the Convention which is not limited to part I thereof and await the decision of the appropriate machinery before it can proceed with the hearing of the dispute before it. Whether this is a practicable proposition would need to be examined and if the position envisaged in Article 8(2) of the President's Single Text is accepted then a corresponding provision would need to be incorporated in part I of the Convention.

Section 1 of the Single Text has six articles. Article 1 reiterates the general obligation of State parties to settle their disputes through peaceful means indicated in Article 33 of the Charter of the United Nations. Articles 2 and 3 exclude the operation of the machinery provided for in the Single Text in regard to settlement of disputes where contracting parties have agreed or may agree at any time to settle their disputes through other peaceful means of their own choice and also where the contracting parties have accepted through a general, regional or special agreement or some other instrument or instruments an obligation to settle their disputes through other means. Article 3 however clarifies that if contracting parties have agreed to settle a dispute by peaceful means of their own choice and have agreed on a time limit for such proceedings, the procedure for

settlement of disputes provided for in the Single text shall apply when the time limit has expired without a settlement being reached, unless the agreement between the parties preclude any further procedure.

Conciliation Procedure

Article 4 indicates the first step in the dispute settlement procedure envisaged in the Single Text, namely, that the parties are obliged to proceed expeditiously to exchange views regarding settlement of disputes. Article 6 envisages a conciliation procedure as the next step. This article provides that any party to a dispute may invite the other party or parties to the dispute to submit the same to conciliation in accordance with annex IA. If the other party accepts the invitation then the conciliation machinery is set in motion. Paragraph 3 of this article specifies the circumstances in which conciliation proceedings may terminate, namely, if the other party does not accept the invitation or after accepting the invitation it fails to appoint its members on the Conciliation Commission or fail to agree to the appointment of a Chairman. The conciliation procedure as envisaged in Annex IA contemplates maintenance of a list of conciliators by the Registrar of the Law of the Sea Tribunal, the constitution of which is provided for in Section II of the Single Text. The list of conciliators is to consist of persons nominated by the contracting parties in accordance with the provisions of Article 2 of annex IA. Article 3 of the annex sets out the procedure for initiation of conciliation proceedings and appointment of conciliators. The pattern followed here is that each party is to nominate two conciliators on the Commission, one of whom shall be of the nationality of the party who may or may not be in the list maintained by the Registrar and the other conciliator

is not to be of the nationality of the party and is to be chosen from the list. The four conciliators so appointed are to choose a fifth conciliator from the list who shall be the Chairman and failing such appointment by agreement within a period of thirty days, the nomination is to be made by the Secretary General of the United Nations within a further period of thirty days. The conciliation Commission is to decide its own procedure and Article 6 of the annex provides for hearing of the parties by the Commission, examination of their claims and objections with a view to reaching an amicable settlement of the dispute. Paragraph 7 of the annex is important which provides that the Commission shall make its report within twelve months of its constitution and makes it clear that the Report of the Commission is not binding upon the parties which shall have no other character than that of recommendations submitted for consideration of the parties in order to facilitate an amicable settlement of the dispute.

The provisions of Articles 4 and 6 in section I of the Single Text as also annex IA should be acceptable because they do not impose any compulsory procedure but are aimed at resolving disputes by agreement or settlement through the good offices of a Conciliation Commission. The recommendations of the Conciliation Commission though not binding is bound to have weight in the negotiations between parties for an amicable settlement.

COMPULSORY PROCEDURES

The provisions of Section II of the Single Text consisting of Articles 7 to 18 require careful scrutiny because they set in motion a compulsory procedure for settlement of disputes. Article 7 clarifies that the provisions of section II will apply only where no settlement has been reached through negotiations or through conciliation as provided for in Articles 4 and 6

in section I or through other methods of settlement contemplated in Articles 2, 3 and 5 of section 1. Article 8 paragraphs 1 and 2 make provision for settlement of disputes through the machinery provided for in part I of the Convention relating to the international sea-bed area. Paragraph 3 provides that if special procedures for settlement of disputes are provided for in any other part of the Convention regarding interpretation or application of that part of the Convention the procedure contemplated in section II of the Single Text presented by the President will apply only when such special procedure has been concluded without any settlement being reached and provided the special procedure does not preclude any further procedure. These provisions of Articles 7 and 8 have also to be read in conjunction with Article 14 and Article 18 of the Single Text.

Paragraph 4 of this article deals with the case where special Committees have jurisdiction over disputes concerning certain provisions of the Convention and this would be dealt with separately.

The effect of the provisions of Article 7 and paragraphs 1, 2 and 3 of Article 8 read with Articles 14 and 18 is that the compulsory machinery for settlement of disputes provided for in the Single Text can be resorted to by any party to a dispute concerning interpretation or application of the provisions of the Convention in the following cases:-

(a) Where conciliation procedure has failed without reaching a settlement;

(b) Where parties have taken recourse to machinery of their own choice but no settlement has been reached within a time limit specified by them provided their agreement does not preclude further proceedings;

(c) Where parties having accepted through a general, regional or special agreement for reference of their disputes to arbitration or judicial settlement agree to be governed by the provisions of the dispute settlement procedure provided for in the Single Text;

(d) Where different parts of the Convention provide for separate machinery but settlement is not reached through that machinery provided that the separate procedure does not preclude any further proceedings;

(e) The machinery provided for in the Single Text will not be applicable in regard to the classes of disputes in regard to which reservations have been made in accordance with Article 18;

(f) The machinery for settlement of disputes can only be set in motion after local remedies have been exhausted. Where the dispute is in relation to matters falling within the exclusive rights, jurisdiction or competence of the coastal state as contemplated in Article 14.

If a compulsory dispute settlement procedure is accepted in principle there should be no objection to accepting the provisions of Article 7 and Article 8 paragraphs 1, 2 and 3, subject to the comments already made on the need and desirability of different settlement machinery under different parts of the Convention. The provisions of Articles 14 and 18 will be separately discussed.

Articles 9 and 10 contain the most crucial provisions of the Single Text. Article 9 gives a choice to the parties in regard to the compulsory procedure which they would accept for settlement of disputes. It provides that a contracting party when ratifying or otherwise expressing its consent to be bound by the Convention or at any time thereafter shall be free to choose by means of a

special declaration, one or more of the compulsory procedures set out in the article. The choice is given as between:-

(a) The Law of the Sea Tribunal whose constitution is provided for in annex IC;
(b) The International Court of Justice;
(c) An Arbitral Tribunal constituted in accordance with annex 1B; and
(d) The system of special procedures in regard to fisheries, scientific research, pollution control and navigation as provided for in annex II.

It is clarified in paragraph 2 of this article that if a party chooses the system of special procedures it must also indicate its choice in regard to one or more other procedures, namely, the Law of the Sea Tribunal, the International Court of Justice and the Arbitral Tribunal in regard to settlement of disputes on matters where the special procedures indicated in Annex II do not apply. It is provided in paragraph 3 of this article that if a contracting party does not make a special declaration in regard to its choice between different procedures indicated above or if its declaration containing that choice has either expired or been revoked and no new declaration had been made, it would be deemed that the contracting party has accepted the jurisdiction of the International Court of Justice if it has made a declaration under Article 36 of the statute of the Court and otherwise the Law of the Sea Tribunal as constituted in annex IC of the Single Text. Paragraph 4 makes it possible for a contracting party to choose the system of special procedures provided for in annex II at any time in regard to settlement of disputes on fisheries, navigation, pollution and scientific research even during the subsistence of its choice or deemed choice of any other procedure indicated in paragraph 1 in which case the other procedure would govern all disputes except those

which are covered by the special procedures provided for in annex 2.

Paragraphs 5, 6 and 7 of this article may be read together. These provide that if both the parties to a dispute have chosen or are deemed to have chosen the same procedure for the settlement of the dispute, disputes between them may only be submitted to that procedure unless the parties otherwise agree. If however the choice or deemed choice exercised by the parties to the dispute as regards the forum are different, then the dispute can be submitted only to the forum chosen by the party defendant, namely, the party against which the proceedings are instituted.

Paragraphs 8, 9 and 10 may be regarded as supplementary provisions which state that the declaration regarding the choice of forum shall be deposited with the Secretary General of the United Nations, that declarations regarding such choice shall be valid until revoked by notice in writing to the Secretary General, such revocation taking effect three months after receipt of such notice and that revocation or expiration of a declaration shall not affect the jurisdiction of the forum in pending proceedings unless the parties agree otherwise.

The main criticism about the provisions of Article 9 is that even if the concept of compulsory procedure for settlement of disputes be accepted, there are too many forums provided here for settlement of disputes. This may not be very desirable in regard to disputes concerning interpretation of the provisions of a Convention, because there may be possibility of conflict of decisions by different forums on the interpretation of the same provisions of the constitution. There may be justification for constitution of special forums in regard to settlement of disputes in technical matters by expert bodies as envisaged in annex II but there should

really be one effective forum for adjudication on matters concerning the interpretation of the Convention. Furthermore the choice given to the parties in regard to the forum in the manner indicated in Article 9 may lead to uncertainties and a certain degree of confusion.

It is suggested on the assumption that compulsory procedures for settlement of disputes are acceptable in principle, that all disputes concerning technical matters should be decided upon by expert bodies of the type envisaged in annex II, which would not deal with any substantial question as regards the interpretation of the Convention for which there should be a separate forum. The jurisdiction with regard to interpretation may be given to the Tribunal constituted in part I of the Convention or to a new forum like the Law of the Sea Tribunal if it is found impracticable to confer this jurisdiction on the former. Parties, however, should be given the choice by agreement to resort to arbitration by an arbitral tribunal in regard to all disputes at any time. The suggestion which is being put forward will really mean one set of compulsory procedures, namely, the expert bodies for settlement of technical disputes and a Tribunal for settlement of disputes regarding interpretation of the Convention. The alternative choice would be available if both parties so agree to resort to an Arbitral Tribunal.

Article 10 paragraph 1 enumerates the types of disputes in which the forum constituted under Article 9 would have jurisdiction. There appears to be some confusion in the drafting of this article because the distinction between the nature of jurisdiction in special procedures contemplated in Article 9 paragraph 1(d) and other forums have

not been indicated. For example, jurisdiction in regard to matters enumerated in clauses (c) and (d) of paragraph 1 of Article 10 can only be exercised by the forums contemplated in Article 9 paragraph 1 clauses (a), (b) and (c) and not by the special procedures provided for in annex II. Paragraph 1 of Article 10 would therefore need redrafting in order to bring out clearly the respective jurisdictions of the forums contemplated in Article 9 paragraph 1 clauses (a), (b) and (c) on the one hand and of the special procedures contemplated in clause (d) of that article. One other matter to which attention may be drawn is contained in clause (f) of paragraph 1 of Article 10 which confers jurisdiction in any dispute relating to the interpretation or application of an international agreement related to the purpose of the Convention which provides that any such dispute shall be decided in accordance with the machinery provided for in the Convention.

Paragraph 2 of Article 10 also needs drafting changes. What appears to be contemplated in this provision is that an appeal will lie against a decision given by an expert forum constituted under annex II where it is complained that the forum has exceeded its jurisdiction or infringed basic procedural rules or has violated the Convention. It is not very clear as to which forum the appeal will lie that is, whether it is the International Court of Justice or the Law of the Sea Tribunal or an Arbitral Tribunal. It also seems doubtful about the provision for an appeal against decisions of expert bodies.

Article 11 provides for the Law of the Sea Tribunal, the International Court of Justice or an Arbitral Tribunal to have recourse to expert opinion when dealing with a dispute involving technical or scientific matters. The provisions

of this article are unexceptionable in principle. However, it is for consideration whether the forums mentioned here should deal with disputes on technical matters at all.

Article 12 which empowers the various forums to apply provisional measures contains the usual powers which are given to tribunals in a compulsory settlement procedure. Articles 16 and 17 which provide for the applicable law in the settlement of disputes and the binding force of decisions are also normal provisions in a compulsory dispute settlement procedure.

There are three important provisions which would require scrutiny, namely, the provisions of Articles 14, 15 and 18. Article 14 provides that in the case of a dispute between contracting parties relating to the exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a Coastal State, a contracting party shall not be entitled to submit such dispute to a forum contemplated under Article 9, until local remedies have been exhausted as required by international law. An exception is however made in paragraph 2 of this very article that in any other kind of dispute relating to the interpretation or application of the Convention the rule as to exhaustion of local remedies need not be applied. The context in which the rule of exhaustion of local remedies has been invoked is not very clear because that normally applies to the question of state responsibility and not in regard to interpretation of a Convention between contracting States. What however seems to be contemplated in this article is that if in the exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a Coastal State such as in the territorial sea, the exclusive economic zone or the continental shelf, any loss, harm or damage is caused to another State or its nationals,

the available local remedies should first be exhausted before resorting to the procedure under Article 9 of the Single Text. If this is the intention then the principle behind Article 14 would be appropriate, but the provisions would need to be redrafted to bring out the meaning.

The provisions of article 15 in regard to proceedings for the release of a detained vessel would appear to be somewhat inappropriate in the context of the other provisions of the Single Text. The relief contemplated under this article is of a mandatory injunction directing release of a vessel jurisdiction in respect of which is given only to the Law of the Sea Tribunal. There is no reason why local remedies in respect of this matter before the appropriate forum of the coastal State should not be sought, as those forums would be quite competent to order the release of a vessel on such conditions as production of a bond, etc. If the vessel is not released for insufficient cause, a dispute may be raised in the usual way and referred to the appropriate forum. The provisions of Article 15 therefore do not seem to be acceptable.

Article 18 excludes the application of the dispute settlement procedure contemplated in Article 9 to disputes in relation to exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a Coastal State, except where a Coastal State has violated its obligations under the Convention by interfering with the freedom of navigation or overflight, the freedom to lay

submarine cables or pipelines or by failing to give due regard to any substantive rights, specifically established under the Convention in favour of other States, or when it is claimed by Coastal State that any other State has violated its obligations under the Convention or the Laws and regulations duly enacted by the Coastal State when exercising the freedom of navigation, overflights, etc., or when it is claimed that the Coastal State has failed to apply international standards or criteria in regard to preservation of marine environment. Paragraph 2 of this Article further provides that a contracting party when ratifying the convention may make reservations in regard to applicability of dispute settlement procedure concerning the matters enumerated therein, namely, sea boundary delimitations between adjacent or opposite States or those involving historic plays or titles, disputes concerning military activities including those by Government vessels and aircraft engaged in non-commercial services, and disputes in respect of which the Security Council of the United Nations is in seisin and the Council determines that any proceedings under the Convention may interfere with the exercise of the functions of the Security Council in that case. It is however provided that if a reservation is made in regard to disputes concerning sea boundary delimitation, the State making such reservation should indicate a regional or other third party procedure entailing a binding decision which it accepts for the settlement of those disputes. It is clarified that any reservation so made can be withdrawn by the contracting party at any time, but whilst such reservation is in force, it cannot invoke the jurisdiction of a forum under Article 9 against any other State in regard to such matters.

It would seem that the result of the operation of Article 18 paragraph 1 is that the disputes which may be referred to a forum under Article 9 in so far as the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and the Continental Shelf are concerned relate to those fields as freedom of navigation, overflight, freedom to lay submarine cables and other substantive rights given to other States under the Convention and preservation of the marine environment. The Coastal State may also invoke jurisdiction if other States violate their obligations in the exercise of such rights given to them.

Annex 1(b) prescribes the procedure for arbitration envisaged under Article 9(1) of the Single Text. The provisions concerning the constitution of the Arbitral Tribunal, the procedure to be adopted, the power to apply provisional measures and other matters provided for in this annex should by and large be acceptable.

Annex 1(c) contains the statute of the Law of the Sea Tribunal. Articles 2 and 3 which set out the composition of the Tribunal should be acceptable and in fact Article 3, dealing with the pattern of nomination and election of the members of the Tribunal, has incorporated in specific terms something which is still a matter of convention so far as the election of the judges of the International Court of Justice are concerned. Article 4 which deals with the procedure for nomination for election; Article 5 which prescribes the term of office of the members of the Tribunal; Article 6 which deals with the question of filling of vacancies; Article 7 which prescribes conditions relating to the interest of members; Article 8 containing conditions relating to participation of members in other capacities; Article 9 dealing

with the consequences of ceasing to fulfil conditions; Article 10 granting diplomatic privileges and immunities to the members of the Tribunal; Article 11 prescribing the declaration to be made by the members; Article 12 concerning the election of the President, Vice-President and the appointment of the Registrar of the Tribunal and Article 13 concerning the seat of the Tribunal should be by and large acceptable. It should however be made clear that the members of the Tribunal whilst holding office may engage in no other activity, that is to say, they should be full time members of the Tribunal.

Article 14 may present some difficulty in two ways. It would be seen from the provisions of paragraph 1 of this article that all the members of the Tribunal need not sit to decide a dispute but nine members should be sufficient to constitute the Tribunal and power is given to the President to determine which members shall participate in the consideration of a particular dispute. In view of the specific provisions contained in Article 3 paragraph 2 about the composition of the Tribunal, it would be desirable to provide here that the President whilst determining the question as to which members shall participate in the consideration of a particular dispute make his selection in such a manner as to provide for participation of members from different groups contemplated in Article 3 paragraph 2.

The second question is with regard to constitution of chambers composed of three members for dealing with particular categories of disputes. These chambers would be exercising the same jurisdiction as the Tribunal in regard to the categories of disputes for which they are constituted unless a party requests that the dispute be considered by the Tribunal itself. This procedure

would no doubt lead to the expeditious disposal of cases, but it is for consideration whether the chambers should be composed of three members only. The procedure for forming chambers appears to be contemplated for disputes of a technical nature such as contemplated in annex II. A chamber for sea-bed exploration and exploitation in this article however seems to be inappropriate in view of the special provisions contained in part 1 of the Convention. Moreover, it is for consideration whether technical disputes should not be left to be resolved by special procedures contemplated in annex II alone. This point has already been discussed earlier.

Article 15 provides for summary proceedings by a chamber composed of three or more members. Since such a procedure would be applicable only at the request of the parties, this is not open to objection. Article 16 interalia provides for obtaining of expert advice and assistance in technical matters by the Tribunal or the chamber dealing with the dispute. Such a provision would be appropriate if it is decided to vest jurisdiction in the Tribunal in regard to technical matters also.

In regard to Article 18 concerning remuneration of members, paragraph 1 appears to be inappropriate. The remuneration of the members should not depend on the number of disputes they decide but they should receive a fixed salary irrespective of the number of matters which are assigned to them. Similarly the provisions of paragraph 5 which makes the fixation of salaries and allowances on the basis of the work load of the Tribunal is inappropriate. Article 19 which provides for the expenses of the Tribunal also needs reconsideration. There may be two methods by which expenses of the Tribunal may be provided for. One is by contributions made by the States parties to the Convention according to an agreed basis of assessment; the other may be on the

basis of fees levied on the parties referring the disputes according to an agreed formula for computation of such fees.

Articles 20 and 21 which contain provisions as to who may approach the Tribunal are not wholly in conformity with the provisions of Article 9 of the Single Text. The remaining provisions of this annex, namely, Articles 22 to 36 are by and large acceptable.

Annex II contains special procedures in regard to settlement of disputes on fisheries, pollution, scientific research and navigation. These special procedures are meant to be operative when a choice is made for their application in accordance with the provisions of Article 9 of the Single Text. The special procedure in regard to all the four matters follows an identical pattern, which is as follows :-

(a) Submission of the dispute to a special Committee of five members appointed by agreement between the parties and selected from a list of experts competent in the field which is maintained by the appropriate United Nations organ or specialised agency, namely the Food and Agricultural Organization in case of fisheries, the United Nations Environmental Programme in case of pollution, the Inter-governmental Oceanographic Commission in the case of Scientific research and the Inter-governmental Maritime Consultative Organisation in the case of Navigation.

(b) If the parties do not reach agreement within a period of three months about the composition of the Special Committee, the members are to be appointed by the appropriate United Nations agencies as indicated above.

(c) The Special Committee adopts its own rules of procedure, it has power to apply provisional measures, a time limit is prescribed for rendering its decision and its decision has binding force.

(d) The Special Committee may be requested by the parties to carry out an investigation and establish the facts giving rise to the dispute, which findings would be conclusive. The Special Committee may on the basis of its findings formulate recommendations which without having the force of a decision shall constitute the basis for a review by the parties concerned on the question giving rise to the dispute.

(e) If any question regarding interpretation of the Convention is involved in the determination of the dispute before the Special Committee, the Special Committee shall suspend its proceedings and require the parties to submit such questions to the appropriate Tribunal as envisaged in Article 9, namely, the International Court of Justice or the Law of the Sea Tribunal or a Arbitral Tribunal.

The pattern envisaged for the special Committees for settlement of disputes in technical matters by expert bodies would seem to be appropriate.

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